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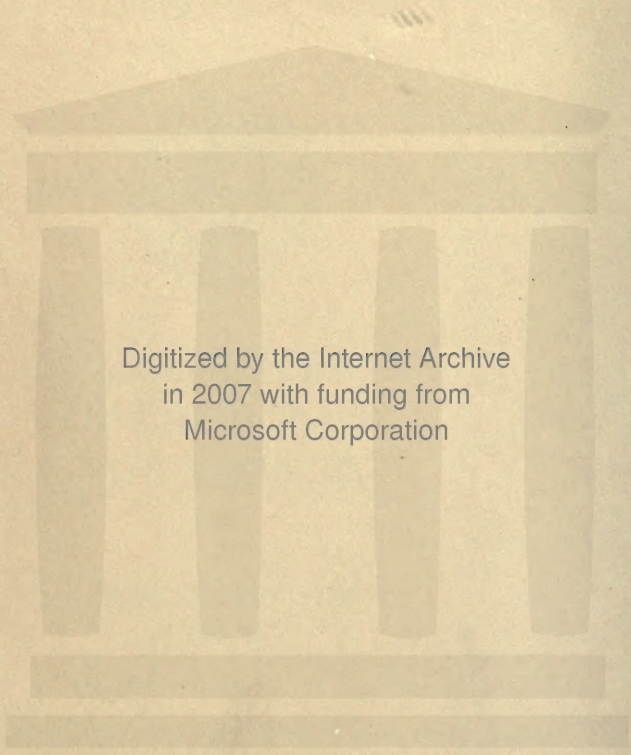
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MODERN JURY TRIALS

AND

ADVOCATES:

CONTAINING

CONDENSED CASES, WITH SKETCHES AND SPEECHES OF AMERICAN ADVOCATES;

THE ART OF WINNING CASES AND MANNER OF COUNSEL DESCRIBED

WITH

NOTES AND RULES OF PRACTICE.

FOURTH REVISED EDITION, ENLARGED.

By JUDGE JOSEPH W. DONOVAN.

THE BANKS LAW PUBLISHING CO.
NEW YORK
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PREFACE.

Very many jury trials of the past quarter century have contained subjects of exciting and romantic interest. Some have been tried by brilliant advocates, whose names alone foretell sayings of original beauty; men who possessed the art and genius to please and persuade a court and jury, in a rare degree. A few cases are already reported, but many have been lost by lack of a record in an enduring form. Wise men have given long lives to the study and art of court practice. Their experience and genius, learning and acumen shine in their victories and sparkle in their speeches in gems of wisdom worth their weight in gold.

Law libraries are full of reports and digests, that life is not long enough to read. The details of jury trials in a single year would be more than any man could master. But standing out from the rest, with stirring thoughts and thrilling interest, are celebrated cases of the past twenty years, and eminent orators, who turned the verdict of juries, by their skill and eloquence, that every advocate should know and remember. To read them is to see the art by which great suits are won, while no class of literature is crowded so full of incident, human nature, and the wisdom of everyday life.

Some of the most important, with as large a variety as possible, of these cases have been selected, condensed, and here reported, with the details and evidence largely omitted. The language and manner of counsel, wit, stories and sketches, are given to show their weapons of warfare. Examples of how juries are selected, witnesses examined, trials prepared, evidence secured, with rules of practice and rare closing periods, taken from stenographers' notes, briefs of counsel, and careful observation, in a dozen different States. Much could be added, and many eminent names would be mentioned, but they happen not to be personally connected with the cases here cited, and their words have not been saved, in form to use, although kindly disposed, they were unable to furnish the speech or sketch that would be of general interest.

This report is confined to *modern* jury cases, many of which are greatly abbreviated, some are reduced from nine hundred to forty-five pages, while their salient points are aimed to be preserved, and the story kept complete. Many of these cases alone would fill a large volume; but the eloquence, incidents, genius and acumen of counsel, are shown in cross examination, debates on evidence, and arguments to the jury, without verbiage. The power, pathos and ingenuity of the defense, or logic and stern facts of the prosecution, have been arranged in as terse and readable a form as I could give them, generally giving from thirteen to thirty pages to a case.

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NOTE TO FOURTH REVISED EDITION.

JUDGE BARTLETT, of Nebraska:—"*Your suggestions have brought me great success in handling arguments.*"

That a book of sixty trials, covering a period of thirty years and citing cases back for two hundred years, tried by two hundred of the ablest advocates in this or any country, but mainly by American advocates—should continue to sell for twenty-seven years is some proof that the lawyers who tried the cases reported were able to master their facts and law as to enforce attention by their eloquence.

The marvelous changes in our country, in law, literature, banking, mining, building, shipping and machinery—especially the trolley, the mobile, the fast travel and vastness of commerce and contracts has multiplied the cases and trebled the fees for the same services and placed all skilled labor and skillful men on a high plane of income. In scarcely any place is this more pronounced than in the trial of large cases, which have come to my attention in fourteen years of Circuit bench service.

I have failed to note any greater eloquence or more skill in trials, more genius in forecaste, more power of presentation by the higher class of present day advocates over Webster—Evarts—Butler—Seward—Mathews—Curtis, Ryan—Conkling—Carpenter and Lincoln, even since the enlarged scope of law schools and college training. A *lawyer is in the man.* It may be finer finished scholars from college, but the *real lawyer* is still one who has solved the problems he presents to a court or jury in his own way: in his own process of reasoning; in his own logic, genius and preparedness, learned and applied in the sharp school of experience.

At the close of the volume and in sections midway and throughout are given winning points—hints on cross-examination—happy turns, trial eloquence and observations on plan of speaking with a power to please, a way to win, drawn from examples. And attention is called now to one illustration which may stand as an index to many, and afford to a student an actual avenue *across the world*, by which one fact is so established as to become stronger and stronger, convincing and more convincing every time it is repeated. It is found under the heading, *The Greek Wheel*, elsewhere inserted, the core of which is:

"I am reminded, O, King, that there is a wheel, on which the affairs of men revolve, and *its mechanism* prevents any man from being always fortunate."

One will see at a glance how the wheel applies, and has always applied, to lawyers.

The last quarter century has been an evolution in law practice. It has about equaled the progress of machine work over hand labor. The shorthand dictation is of immense value to busy practitioners. The rapid cross-examination to unearth *predatory* wealth, and the poorly hidden

riches, unlawfully made in the giant insurance venture. Trusts and watered stock dealings; the Dill Settlement of the Frick case, a pioneer million dollar fee—with all the partnerships, shareholders in corporate stock, have far outstripped Congressional or Senatorial positions. In fact, ours is the day and year of fame and fortunes earned in litigation, and well may the wise and eloquent lawyers lead in the Arts of Civil Government.

The value of a lawyer to-day is greater than ever before, depending upon his keenness, alertness, preparedness to do the kind of service demanded of men who handle vast interests; leading up high on the ladder of fame, as witness, Choate to St. James, Root to the Cabinet, Folk and Hughes to the leadership of great state issues, or Spooner to resign a Senatorship for a higher position—large law practice. Never in our history, were great lawyers in greater demand.

J. W. D.

Detroit, March, 1908.

THE VALUE OF A LAWYER.

The value of a lawyer depends upon himself—his alertness, his preparedness of mind, and body for the task that lies before him.

It matters not where he gains his preparedness, whether it be at Harvard, Yale or Ann Arbor, in the Court Room, in his study, or by experience. Such keenness, forecast and preparedness will surely be needed to raise him above his fellows.

It takes great intellectual gifts, said May, to make a great lawyer. No man rises to a height at the Bar, without a struggle, and without intellectual power. Unlike the minister, with his ex parte case behind the pulpit. Unlike the doctor with his prescription in the dark, the lawyer's work is done in the broad light of open day, confronted at every step by able opposition, and argument, with the entire community looking on. To meet such a test requires the keenest and ripest powers. We need our advocates, and our lawyers, we need them for the glory of arts and of letters, but more than all, for the perpetuity of our institutions.

It was the plain country lawyer of Saginaw, with his mastery of law, who raised the point in the Million Dollar Depot case, to the effect that *one who draws a contract, and leaves it uncertain, when he could have made it certain, is ever after estopped from trying to alter its terms in his own favor,* and the country lawyer, Benton Hanchett, won the Million Dollar case on that single issue, as the case was promptly affirmed on that issue.

O, to be just a country lawyer like Hanchett, and win such a brilliant victory.

We need not go so far from home to find the value of a lawyer with an opportunity, for we know of a nearby lawyer, at our own banquet table, right here in Hastings, and know that he won in a great railway tax case, with a matter of *six million dollars* to the credit of the State of Michigan, and to the *everlasting credit of our "Charlie Blair,"* of the Supreme Court of Michigan.

And I add again for emphasis, O, for the value of a lawyer, just as good as Justice Blair!

But another, and greater than all lawyers ever yet produced in our country—and I say it deliberately, for at the firing on Fort Sumter, April 12, 1861, the greatest lawyers of our country were at sixes and sevens on the power to maintain the Union. When a plain Western lawyer,

with wisdom, forecast, and eloquence, said:—the power of perpetuity was *implied* in our form of government, and even on a contract basis one party could not annul a contract without the consent of both parties.

And almost in the same breath, England and France were about to recognize the Confederacy, and Seward penned a savage letter to England, which breathed of war in every sentence—when the plain lawyer, Lincoln, took the letter to the quiet of his private room. When he went into that room he carried a challenge to war, and when he came out, he had a dignified letter that told England how she had taught us the doctrine of neutrality between friendly nations, and we would follow in her footsteps.

The world was astonished and bewildered at the clearness and soundness of the country lawyer's position, and war with England was averted. O, the value of a lawyer like that, at a time like that, when the life of a nation, with its millions of people, for his clients, and the millions that they owned, in peril by the issue!

The value of a lawyer, *is in what he does*, not for himself, but his country. It was Demosthenes, the prince of orators, who said, in thunder tones at Athens, "*Man is not born to his parents only, but to his country.*"

And I place Lincoln, the lawyer, as the greatest genius produced by the bar in this or any other country for a hundred years. Lincoln, the lawyer, solved more problems of the government than any American statesman.

It was a country lawyer, M. R. Waite, in practice in Maumee, Ohio, before the war—starting in a plain way, at first, trying cases in blacksmith shops, holding on with his nerve, courage and integrity, until he became master of himself.

Waite was an "Ironside" in law, and was appointed by General Grant to prosecute the Geneva Award Claims, and made such a masterly argument in the case, that he won the award for his country of $15,500,000 and a *seat on the United States Bench* (the highest station in the world) for himself. O, the value of a lawyer, in a time like that; with an opportunity like that; and to win a case of fifteen millions like that!

But I hinted that something would be said of new opportunities. In an Eastern Art Gallery, opportunity is pictured as a young man, about to run a race. Around his head, half concealing his eyes, is a turban; on either arm, a wing, on each foot a web. Asked why the hood was over the eyes, the guide said: opportunity is not seen face to face, clearly, we only get a glance at it and it is gone. Why are the wings upon the arms? Opportunity goes on wings. Why are the webs upon the feet? Opportunity is found upon the water as well as upon the land.

So, with young lawyers, you must watch your opportunity. It comes and goes quickly.

Suits have sprung up from fast machinery, and trolley accidents. Suits over corporations, business growing out of stock companies. Suits over wages, liens and endless work over new business contracts. In very many companies, young men can gain an interest and act as counsel.

It will be a hard battle—the battle of preparedness, and "You are beaten to earth." Well, well, what of that? Come up with a smiling face.

It isn't against you to fall down flat, but to lie there, that's disgrace.

The harder you fall, the higher you bounce. Be proud of your blackened eye.

It isn't the fact that you are *licked that counts*. It is, *how did you fight, and why?*"

The opportunity to the young man never was brighter. The banks are full of money; the stores are full of goods; the shops are full of orders; the parks full of flowers; the homes are full of happiness.

O, to be a young lawyer to-day with fifty years of time in a world like ours, in a country like ours, is a splendid opportunity. And I say to you, young men, money making is not done by hand any longer. It is done by *machinery*. Cities, states and nations grow rich by machinery. You must get next to the machines; take shares in safe companies—and help form the new *companies*—take stock in banks, take active part in the world's affairs—prepare fully and wait patiently, but *work while you wait*.

The value of a lawyer is in himself—in what he can do and in his refusal to surrender when he knows he is in the right.

The case is made, the conclusion is clear; money is not the measure of honor. Fame is not the reward of one case. Honor, fame and greatness are all earned and only earned in our country by a struggle.

And to you, young men, in the May morning of your lives, I hold up the character of that fearless leader, Lincoln, his wisdom, forecast, courage and eloquence; who dared to think for himself and be independent, and say: measured by his one act of emancipation and the happiness it brought into the world, his fame will rank with the fame of Washington!

THE THINKER WINS.

Within the period of the next half hundred years—guessing the future by the past—the leaders in our country will have risen from the factories, shops, electrical and industrial ranks; just as surely as machines are destined to replace hand labor, so surely must thinkers invent and create the machines, and so surely must men who think do the inventing. The age of drudge work and even heavy lifting is about over. Machines will do the lifting as easily as elevators deliver passengers to the top of tall buildings; mining will not always be done by hand, and mortar mixing will soon disappear, or be delivered much nearer a finished product.

And who are the men who will reach the higher levels of advancement? The answer is simple: those who are born of engineers, inventors, thinkers, managers of works—who think at their work, after their work and before starting. Why? Shall we breed fast horses from clumsy stock, or do we not rather cross them with swift, trim, spirited animals? So, the thinking men of the future will be bred from thinkers—and they are found among enterprises that call for keen thinking.

No stones need be thrown at young clerks, law students or bookkeepers, but such are rarely inventors; their time and care and energy and ambition is each centered on the power to please customers, not on a new method of making buildings of steel and cement, glass and concrete, iron and terra cotta. Nor are they thinking of air brakes—safety signals; strong bridges, or air hammers, or any new process of turning earth's products into money.

Not long since, I spent a couple of days with a leading glass works manager from Pittsburg, and later an editor of a foundry paper, and later still paid a visit to the Lackawana Steel Works at Buffalo and learned many startling facts on our country's progress. First, from the Glass Works, that glass is now made by machinery, twenty times cheaper than it was forty years ago; from the foundry editor that a belt of iron land one hundred miles wide and two hundred miles long in upper Michigan and lands adjoining is proved up, which contains enough to supply the world with steel for one thousand years or over.

From the Buffalo works mentioned, with its seven thousand men, fifteen thousand dollars daily pay roll, twelve thousand tons of one product—tool steel—and eighteen hundred tons of tee rails with men earning $12.00 per day down to $2.50 daily—men who think clearly, act with

wisdom and caution, men who are thinkers and are constantly found using new methods, new machines, new promotion. And the gist of all to-day is: a man trained to do something well, willing to do it, and stability to grow up with a business until he earns and owns a good share in the business.

Courts have often found what a signal aid it is to a marine lawyer to have had experience in sailing vessels, in accident and collisions upon the water; of the aid to a business lawyer to have had special business training, especially as to patents and machinery, and so on through all the whole line of structural steel and iron works, building of every description, mining, farming, of making things and doing things, more than of reading from a few books what people did in older countries under vastly different conditions. The up to date lawyer who can present his case on the facts with precision and practical clearness is the winner every time.

TRIAL HINTS.

With a claim to observation more than origin, these rules seem in vogue to-day:

(1) Select all cases with the closest care—reject those doubtful, *or settle them.*

(2) Select a jury of middle-aged men, smart enough to see a point, but avoid leaders, or *Bell-wethers.*

(3) The jury list and examination on their Voir-Dire will show a bias, if they have one; once selected, do not offend a jury by flattery, or provoke them by petty quarrels with counsel—*they tire of wrangling.*

(4) See that you start well; a candid opening makes a fine impression; *like the first sentence in an address, it acts as a preface.*

(5) Never lose *interest* in your side—you will be overmatched at times, but *do not surrender.*

(6) No jury will believe in your case if you show the white feather; *stand like a rock against opposition.*

(7) Sprinkle your case with candor—make it clear above all things and prove it to be so just as to compel a verdict.

(8) The kind of skill in law depends upon the kind of contest. Carnegie called Dill—in Frick's case—as one trained in corporate law. He paid a million fee and won five by it. Dr. Agnew was called to Garfield's side as a wise surgeon. My neighbor very near to death was taken to a small Minnesota village where a special surgeon could operate. Be sure your surgeon (counsel) knows the case.

(9) Lawyers in towns and cities are never gauged by the cities where they live, but always by the skill they display. "I have been blind twenty years," said a tall traveler; "My sight has been restored, I am almost home; an unknown man of skill has restored my sight. *I am almost home,* two of my children were born since I was blind. I am soon to see them." The train halted and in a moment the arms of the grown up girls were wound round his neck. *O, for such skill!*

(10) There it is, *skill;* after all—mastery of facts and mastery of law, compels attention, secures fees, creates fame; but study is below it all. It is Edison's ninety-eight per cent sweat and two per cent accident.

(11) I had omitted two important means of winning cases. This will illustrate: A German car builder was badly mangled by a heavy car being backed over his left arm near the shoulder, breaking four ribs and

seriously disabling him otherwise. "What else happened to you?" "Anything else?" savagely asked counsel—as though he had exaggerated—"I don't know," said the witness, "*I was dead then.*" He burst into a flood of tears that touched every juror—$12,000 was his verdict. No lawyer could speak with more eloquence.

And now to close the rules with:

(12) From the moment you state your case to its close, *you are judged* by every juror. You cannot deceive twelve men very long. Your *clearness, preparedness, alertness, good temper, good judgment, experience* are in issue. Note this:

Stop in Time; Not Sworn, He Was Too Dumb

A German charged with murder was identified by a cap picked up near by while he was caught bareheaded; he was well defended by the plea: A cap—A cap—A cap. How many, many caps can be easily found to fit, but how *doubtful such identity!* Jury said, "Not Guilty!" As the people left, the Judge said to the prisoner: "You are free, you may go." "But, schudge, please may I *now have mine cap!*" HE KNEW NOT WHEN TO STOP.

NEW POINT IN PRACTICE.

In the McIntyre will contest, a suit to establish a lost will—or build it on facts and circumstances by some fifty witnesses, requiring a month to try before a jury—a will thrown out by the Probate Court, and by two trial judges, with one jury disagreement, and at last in its third trial, a witness who appeared at two trials looking very much like a tramp, and on the last trial well dressed in a new soldier's uniform, was examined savagely:

"Let me see, did you have that fancy uniform on the last trial?

"No, sir.

"Nor on the other trial before Judge Hosmer?

"No, sir.

"Now, come, Johnnie, tell us, who *bought you* that fine uniform?

"Well, if you stop long enough and let me, I'll tell ye.

"Well, out with it!

"I'm in the Soldiers' Home at Grand Rapids, and we *all wear uniforms.*"

Johnnie, who had been a dull witness, made the best impression of the fifty sworn—he *may* have won the $250,000 contest.

In the same trial, a paper was offered in evidence and a vigorous objection followed—so loud that the Judge said, "Come, come, this is unseemly;" and added:

"Now, Mr. Geer, what *is the purpose* of the paper?"

"Why, your honor, it is to give the jury something that speaks louder than Jimmie!"

And the Judge said: "Then, I'll admit it," amid great laughter. Twelve men can see a joke and find its point.

THE GREEK WHEEL.

The wise Greeks said:

Many are the wonderful things in the world, but nothing is more wonderful than man. Man is not born to his parents *only* but to his country.

The character of a people is known by the *men they crown*. A great souled man will not be given to small ambition; he will be considerate of the rights of others, even of their slaves; but of *all things a great souled man* will be an *unselfish man*.

The story of the Greek Wheel takes us on a journey across the world with four lines, and, stranger than all, proves itself true in every sentence.

It is a dialogue between Cyrus and Crœsus over Peace and War, when these strong words were used by Crœsus.

"What shall we do with those Lydians? They do make up much trouble," said Cyrus.

"I would not, O King, humble that people," said Crœsus. "They live from the soil, wear leathern garments. They are ruled by a woman." Cyrus seemed not convinced, and Crœsus spoke again.

"If thou thinkest that thou art like one of the gods and no harm can come to thee it may do, but,

"*I am reminded, O, King and take this lesson to heart, that there is a Wheel on which the affairs of men revolve, and its mechanism is such that prevents any man from being always fortunate.*"

From this great sentence, whether it be from the brain of Crœsus or of Solon, his intimate friend and associate, one of the wisest Greeks, is seen an avenue across the world—extending back 2300 years. It is verified by a score of instances, like the end of Socrates, who was forced to drink the poison cup at the height of his career, saying: Farewell my judges; it is now time to go away, for you to live, for me to die; yet which of us shall come to his reward and rescue homage due to upright conscience is known alone to Him who rules the world;—and he drank the poison; of Demosthenes who was voted to death for teaching false doctrines to the youth of his time; of Cæsar, the greatest king who ever lived, who was stabbed to death in his Senate by his pretended friends: of Napoleon, banished to St. Helena, five years—a living death; of Webster and

Clay, going backward, in disappointment to their graves; of Blaine and Conkling; Colfax and Greely; Sumner and Douglas; Lincoln and Grant, and even down to General Alger. Oh, how the Wheel turned with them all!

And we are reminded many, many times in life, that there is a Wheel on which the affairs of men, of cities, and of nations revolve and it prevents *us all* from being *always fortunate*.

In fact the Greeks tell us that the gods are jealous when men are too happy.

ORATORS AND ORATORY

ANCIENT AND MODERN.

The charm of oratory, like music, must be heard to be appreciated, and comprehended to be enjoyed. So little can be placed upon paper that only rare passages read well and bear frequent repetition.

Yet there are single speeches that have changed the fate of nations, or saved a poor, quivering human being from a cruel death of horrible torture; speeches that carry with them an inspiration forever, and, like old, familiar songs, when repeated, always awaken a new interest.

Very much of an oration dies with its author and the event that called it into being. A stranger, coming in suddenly on a scene of local interest, in the midst of a stirring speech, would realize but faintly the real spirit of the occasion, and could hardly comprehend its true beauty. And no one will claim that a clear repetition of that matchless oration of Demosthenes, in his *contest for a crown*, which included those magic words, "*Man is not born to his parents only, but to his country!*" could be delivered by any other than the mighty genius himself, who had long been imprisoned by Alexander; who was moved by the plaudits of a mighty people, whose liberty he believed was hanging in the balance, adding fire to his eye, power to his voice, soul to his sentences, and energy to his expression.

In this "greatest oration by the greatest orator," we find the famous oath of Demosthenes. "No, my countrymen, it cannot be that you have acted wrong in encountering danger bravely for the liberty and safety of all Greece. No; I swear it by the spirit of our sires, who rushed upon destruction at Marathon—by those who stood arrayed at Platæa; by those who fought the sea-fight at Salamis; by the men at Artemisium; by the others, so many and so brave, who now rest in our public sepulchers; all of whom their country judged worthy of the same honor; all, I say, Archines; not only those who prevailed, not those only who were victorious. And with reason. What was the part of gallant men? they all performed. Their success was such as the Supreme Ruler disposed to each."

The bold, glowing words and peculiar manner of Burke in the trial of Hastings, closely resemble the style of Demosthenes. After a vivid description of the horrors inflicted on the natives of India by the agents of Hastings, during which many fainted and were carried out, he was so overcome, said a writer, as to be unable, for many moments, to proceed; and with bowed head he waited several moments in silence and deep emotion, and finally proceeded: "What is it that we want here to a great act of national justice? Do we want a cause, my Lords? You have the cause of oppressed princes, of undone women of the first rank, of desolated provinces and of wasted kingdoms.

"Do you want a criminal, my Lords? When was there so much iniquity ever laid to the charge of any one? No, my Lords, you must not look to punish any other such delinquent from India. Warren Hastings has not left substance enough in India to nourish such another delinquent.

"My Lords, is it a prosecutor you want? You have the Commons of Great Britain as prosecutors, and, I believe, my Lords, that the sun in his beneficent progress round the world, does not behold a more glorious sight than that of men, separated from a remote people by the material bounds and barriers of nature, united by the bond of a social and moral community—all the Commons of England resenting, as their own, the indignities and cruelties that are offered to all the people of India!

"Do we want a tribunal? my Lords, no example of antiquity, nothing in the modern world, nothing in the range of human imagination, can supply us with a tribunal like this. My Lords, here we see virtually, in the mind's eye, that sacred majesty of the crown, under whose authority we sit, and whose power you exercise. We see in that invisible authority, what we all feel in reality and life, the beneficent powers and protecting justice of his majesty. . . I impeach Warren Hastings of high crimes and misdemeanors.

"I impeach him in the name of the Commons of Great Britain. In the name of those eternal laws of justice which he has violated: . . . I impeach him in the name of human nature itself, which he has cruelly outraged, injured and oppressed, in both sexes, in every age, rank, situation and condition of life. . . . My Lords, I have done. The part of the Commons is concluded. With trembling hands we consign the product of these long, *long* labors to your charge! *Take it! Take it!* It is a sacred trust. Never before was a cause of greater magnitude submitted to any human tribunal!"

He was followed by Sheridan, that magic of impulsive oratory and eloquence, in a speech so grand and lofty, that the people sat five hours, spell-bound. No report was ever made of the words, and none *could be made*, of the fiery sentences as uttered; no pen could sketch the keen, magnetic look; the low, persuasive tones; the loud, vindictive manner; the power and play of passions, like the actor in the scene.

This style of Demosthenes was employed by Lord Chatham, the eloquent defender of America, in England, in the time of the Stamp Act, when he said: "If I were an American, as I am an Englishman, while a foreign troop was landed in my country, I would never surrender! Never! Never! Never!" And by the same statesman, in his appeal for personal rights, when he said: "The poorest man, in his cottage, may bid defiance to all the forces of the crown; it may be frail; the winds of winter may blow through it; the storm may enter it—but the King of England can not enter; all his forces dare not cross the threshold of the ruined tenement!"*

Once in an age will be born other men, and other events, which may resemble, but will never excel, such scenes of mental contest. What was then voiced by a half dozen leaders, is now sown broadcast by a million papers—saying in advance all that is new or novel in our great achievements. Once in a while, men like Henry will utter, "Give me liberty or give me death!" to remind us of Grecian oratory, but they will find it a well-told story, often read. And but for a Webster, this powerful style of a Demosthenes would have died before our day. It passed from the stage of actual oratory, and had lain, half forgotten, nearly a century, when Hayne aroused Webster, in the Senate, to great thoughts, that leaped to the immortal by a single bound; thoughts that could flow in no other channel but the heroic and sublime. In his reply to Hayne, that greatest effort ever made in modern times, the audience sat, silent, and when the giant's voice rang out through the Senate and the halls, and penetrated every room as he said, with such soul-stirring emphasis:

"Nor those other words of delusion and folly, 'Liberty first and union afterwards;' but everywhere, spread all over, in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every American heart, '*Liberty and union, now and forever, one and inseparable!*'"

The audience remained seated in silence; "hands sought each

* "*Orators and Statesmen*," by Harsha.

other, eye turned to eye, and hundreds hung breathless on the echo of the orator's words." No orator ever excelled the effect of this master eulogy on our country. And no one can doubt that, in Burke's place, Webster would have fully equalled Burke, or, in Greece, even might have equaled Demosthenes.

But there is another kind of oratory, described by Cicero as the art of saying things in a manner to please and persuade, a mingling of passion and reason—thoughts set on fire, the sudden birth of a new expression, of grand ideas, by looks and words and *actions*—the means by which men are moved. This style of Cicero was not original. He studied it in Greece for years, wholly enraptured with the noble art. It was not Roman, but he gave it a Roman cast, and later historians called it so because it influenced Roman minds. It was neither the style of Demosthenes or Pericles, but of students of the great Grecian masters. Thus oratory has been a borrowed art for ages.

This is the kind of oratory more suited to our day. It was employed by the gifted and graceful Roman orator, in his plea for a Roman citizen. It has more of the grace and charm of music and the art of persuasion, coupled with an ease of delivery that tells men to act in a way, never to refuse the simple and sensible request, that steals in on the senses by surprise, and takes us captive at its will.

Eloquence is described as close, rapid, powerful, practical reasoning, animated by intense passion, and speaking in a manner proper to persuade. An excellent example is of Cicero on the execution of Gavius: "In the middle of the forum of Messana, a Roman citizen was beaten with rods, and between the blows were heard 'I am a Roman citizen!' as if to ward off pain and torture from his person; and as he kept on repeating his entreaties, 'A cross, I say, a cross!' a *cross* was made ready for the miserable man. O, sweet name of liberty! O, admirable privilege of citizenship! O, Porcian law! O, power of the tribunes, bitterly regretted by, and at last restored to the Roman people, in a town of confederate allies, that a Roman citizen should be bound in a forum, beaten with rods by a man, who only had fasces and axes through the kindness of the Roman people! What shall I say when fire and red-hot plates and other instruments were employed to torture him? If the bitter entreaties and agonizing cries of that man had no power to restrain you, were you not moved by the weeping and groans of the Roman citizens, who were present at the time. Men born in obscure ranks, go to sea, to places never seen before, and, owing to the confidence of their citizenship, they shall be safe. It is a crime

to bind a Roman citizen; to scourge him is wickedness, to put him to death almost a parricide. What shall I say of crucifying him? It was not Gavius. It was not one citizen. It was the *common cause of freedom! exposed to torture and nailed on that cross!*"

The new star in English eloquence came with Erskine, with the style and elaborate finish of a Cicero, sparkling in imagination, replete with graceful gesture, elegance of expression, charm of manner, and refinement of sensibility, that won with an audience, pleased and persuaded. He was slow at first in development, but want and poverty drove him to the law, and when, as he says, "It seemed as if my little children were tugging at my skirts, begging for bread," he cut loose from restraint and became a natural orator. His warm, rich, brilliant sentences, ready and retentive memory, powerful imagination, and elegant expressions, acquired by living in the language of Milton and Shakespeare, are read as masterpieces by thousands the world over.

Of the few whose orations and speeches read well, far removed from the scenes that made them, are those of Cicero, Erskine, Webster and Everett, and of these the world will never tire of hearing. It is said that the single oration of Everett, on Washington, was delivered over a hundred times, in the different cities of the Union, and always to interested audiences.

As the style of Webster was grand and vehement, like Demosthenes, the words and manner of Everett resemble Cicero. That same copious flow of beautiful, elaborate imagery, the refined, melodious sentences, the elegant and persuasive delivery, the rare sympathy and finish, the matchless arrangement of happy thoughts, gave a harmony to his utterances that will never be forgotten.

Space allows but one selection, old and yet ever new, for it never has been excelled in all the annals of eloquence.

Horace Greeley said this speech of Mr. Everett, and Mr. Lincoln's speech at Gettysburg, and John Brown's address at Harper's Ferry, were the masterpieces of American oratory. I would change from Mr. Brown's speech to Mr. Webster's, and agree with Mr. Greeley.

But here are the words of Everett that tell their own story:

"Welcome, friend of our fathers, to our shores! Happy are our eyes, that behold those venerable features! Enjoy a triumph, such as never conquerer or monarch enjoyed—the assurance that, throughout America, there is not a bosom which does not beat with joy and gratitude at the sound of your name. Welcome! thrice welcome, to our shores! and whithersoever your course shall take

you, throughout the limits of the continent, the ear that hears you shall bless you, the eye that sees you shall give witness to you, and every tongue exclaim, with heart-felt joy, '*Welcome! welcome, Lafayette!*'"

In classic beauty and polished sentences Cicero seldom equaled and never excelled these passages. As has been said, tone, voice, manner, gesture and expression die, in a large degree, with a speaker; they can not be reproduced in print. While this is true of Mr. Everett, it was doubly true of Mr. Webster, whose swell of voice and ponderous sentences were fit expressions of a giant mind that the cold printed page can never convey.

If this rapid glance at the orators of renown, and a few gems of their sayings, may serve to interest a reader, on themes gone by, how much more should our later events and modern court trials and orations serve to stimulate the advocate of to-day, as he reads the points worth preserving, and too often lost, of trials within twenty years in which orators of our times have contended in mental duels, where ripened learning meets an equal foe, and where advanced civilization crystalizes the good and eliminates the verbiage of ancient oratory; where the higher intelligence of mankind demands that the methods of practice shall grow clearer and terser, to keep pace with the progress of the age.

The orators of to-day are the Wires and the Presses. The eloquence is often supplied by the editor's quill. But there is, and always will be, a demand for stirring and eloquent speeches, in court, in Congress, and on the rostrum. It is felt to-day as with the ancients, only in a less quantity and more refined degree.

The oration of Ingersoll at Cincinnati in '76, the master speeches of Conkling and Garfield at Chicago in 1880, or the thrilling eulogy of Daniel Dougherty on Hancock the same season, were delivered with as much energy and effect as the speeches of Clay and Calhoun, and but for the power of the press, which had filled and prepared the people, the multitude would have been carried captive at the will of the speakers (as in the last instance they seem to have been). Men and manners may change, but truths and passions are eternal. Fear, hope, reward and human sympathy always have been and always will be subject to influences, and are swayed by the power of great minds, acting on minds, through the medium of eloquence.

There are thoughts and themes that grow by repetition, like the songs of Burns and Whittier, and the plays of Shakespeare.

Orators have arisen, and will arise, who *voice* one event and one

occasion; men with neither learning nor grace, nor logic, nor fine words, but with the rugged manner of a native Indian, drawing their inspiration from the Almighty, with a genius born of heaven, grouping some homely thoughts in eloquent delivery.

Some one shall say again, in that beautiful rhythm of sympathy and grandeur, "Let it rise! Let it rise! till it meet the Sun in the glory of his coming!" Some one will "look on a sea of upturned faces," who has not the gift to raise mortals to the skies, nor that other power to drag angels down!

"Modern civilization," says a great writer, "is the difference between an Indian's hut and a lady's parlor." But oratory has not advanced in that degree, for the brightest orations of our day have never excelled those of the ancients; nor have the most cultivated speakers ever used choicer words than did the little Indian girl at Omaha, who spoke in the simplest language of Nature, when she said, "It is but a little thing my people ask, yet infinite in its consequences; they ask for *liberty*, and *law* is liberty!"

By saying that eloquence is often born and never made, it may as well be said that oratory is oftener made than born. The true orator, like the wrestler, walker, or oarsman, is a thoroughly trained and skillful man, read and cultivated to the art assumed; he has to deal with an age of reason, and he must deal in living lines of history, science and events; he must be "burnished like a silvered sabre, without one rusty spot." American advocates have realized this requirement. They are terser, clearer and more industrious and ingenious every decade. They are growing more fertile in resources. Fifty years ago the plea of emotional insanity was unknown; now it's a sheet anchor to the rich and influential!

Counsel do not all plead for insanity, and a clearer picture of law and its uses will never be made than that beautiful word painting of Major Gordon, when he describes how "It surrounds us like the air we breathe, and lived before our being; that meets us in our helpless infancy, shields us with a mother's tenderness, follows us through the perilous journey of our lives, guards our liberty from the cradle to the coffin, and defends our persons and property from harm; walks with us to the verge of the deep, dark valley, protects our lifeless remains in peace till the coming of the resurrection! Nay, even the sweet rose, planted by the hand of affection, or the wild flower growing on our graves, shall all be guarded by the strong arm of law!"

A graphic description of law and evidence is aptly given by Mr. Lothrop, when he says: "All the mists are cleared away. The

obscurity that surrounded this case has disappeared. It is as though the walls of that bank were lifted up and the bright September sun should stream in, and show the dreadful deed! In the light of all this evidence, you see, standing over the body of his prostrate victim, his hands dripping with blood, the murderer of Herbert Field!" Truly the walls are lifted, and we look in!

The sturdy appeal of General Browne, for the law's vindication, is given in the Hetfield homicide: "Take this widow, and her helpless orphan children, and go to that lone and lonely kirk yard, and, standing by the grave of Calvin Hetfield—unmarked by stone or monument—and, in view of the great sorrow that this defendant has brought into the world, there, there write your verdict!"

The sweeping and dramatic sentence of Storrs, in the defense of Babcock, is excellent: "He is not guilty, gentlemen, he is not guilty! I feel an inspiration settling in this court room, stretching away to Washington, as if to bear the glad news to his devoted family, who, in his humble home, where an anxious wife, now surrounded by her little children, are kneeling, watching, praying and looking to God! for his deliverance and joyous return to the capital of his country, that he has served so long, so faithfully, and so well!"

Here the speaker carries his hearers a thousand miles with a single sentence.

The massive periods of Seward, and prophetic forethought of Van Dyke are too full of the sublime to afford a separation for introductory extracts. They will be found in extended paragraphs in the cases to which they pertain.

And again, the sterner words of Judge Ryan: "Whether they come in the soft, white gloves of peace, or the dark, bloody gauntlets of war," breathe forth a Roman beauty

The deep drawn pathos of Graham, "Long enough has he endured the pelting of this pitiless storm; and who does not hope that he will find an asylum in your justice, and that it will be seasoned with mercy, as you yourselves expect to be forgiven!" is thick with emotion.

The homely eloquence of McReynolds, pleading for the little orphans is rare: "My work is done, gentlemen; but you will do a better work. Even now, by your silence and your interest in this case, methinks I hear you say, 'Stop! delay not longer! Let us begin this work of justice. Stop! that we may rebuke this cruel company. Stop! that we may restore these orphans to their own! to that pure character that they will love to honor; a character as

pure as they knew their mother on that last and long good-night, the night before the night of death! Stop! till we give a verdict that will vindicate a mother's name and a mother's love for her children!'"

Arnold's appeal in Hubbell's case is pathetic: "And, in yonder cottage, almost within the hearing of my voice, there is yet another who is waiting, with intense solicitude, the result of your deliberations. She waits, in unshaken confidence and devoted love, for the accused. She is in deed, as well as in law, the wife of her husband, and she would clasp that man to her breast, though her arm were in a flame of living fire till it burned to its very socket! Her prayers are all around you—her hopes are all dependent on you On bended knee, and with eye uplifted prayerfully to Heaven, before you, she implores you: 'O, give me back the husband of my youth! I can surrender him to God—I can surrender him to my country—but O! spare the blow which, while it destroys him, dooms me to lean upon a broken reed, and to a life without a hope!'"

The stirring sentences of Beach are rhythms of beauty: "They were married when he enjoyed the bloom of her youth and heart's loving tenderness! Married when it flattered his vanity to control her beauty! Married when she went through the valley and shadow of death to bear his children! But when of all times marriage is most sacred, when they should be leading each other along the western hill slope, to rest together at its foot, *then it is* he seeks *to cast her off* and call the contract spurious!"

Again, the touching and brilliant appeal of Voorhees, for Mary Harris, moved all hearts within hearing: "The wife who is graced by her husband's love is more beautifully arrayed than the lilies, and envies not the diadems of queens! But to the young virgin heart, more than all, when the kindling inspiration of its first and sacred love is accompanied with a knowledge that for it, in return, there beams a holy flame, there comes an ecstacy of the soul, a rapturous exhalation more divine than will ever again be tested this side of the bright waters and perennial fountain of paradise! O, how her prison cell has been lighted by the purest and gentlest of her sex, and delicate flowers from the loftiest statesman in the world, have mingled their odors with the breath of her captivity! In the name of Him who showers his blessings on the merciful, who gave the promise to those who feed and clothe the hungry strangers at their gates, *unlock the prison door, and bid her bathe her throbbing brow once more in the healing air of liberty!*"

MODERN JURY TRIALS

AND ADVOCATES.

MATT. WARD CASE.

Tried at Elizabethtown, Ky., April, 1854.

Considered in the light of interest, incident, character of parties, witnesses and counsel, few cases have excited such general comment in the south as the eloquent defense of Ward for the killing of Prof. Butler.

The story of the case is a brief one. Three brothers, William, Robert and Matt. Ward, had an altercation with Prof. Butler, the teacher of William, and other young men from sixteen to twenty-two years of age, of high spirits and aristocratic origin, in Louisville, Ky., and in the course of the controversy the teacher called William a liar, and was called on by the brothers for a retraction. Butler refused, and Ward called him "a d——d rascal and a d——d coward." Butler clinched, and Ward shot him, fatally, in the left lung, with a pistol, which he bought that morning and had lately loaded.

Such a trial in the south is never forgotten.

The theory of the defense was well stated by the words of Gov. Crittenden, "A blamable necessity; not justifiable, but excusable." There was a conflict of testimony as to which struck first, but it is clear that Ward was the weaker man and harmless generally, of excellent character, had traveled abroad, written some acceptable work, was highly respected (as was Butler), but no match for Butler in a hand to hand conflict.

The prosecution argued that it was a premeditated killing; that the newly bought and loaded pistol proved it; that the insulting words showed it; that satisfaction meant shooting to kill and murder. They made a strong showing on, "If the case was reversed, and had Butler killed Ward *for a grossly indecent attack*, could *he* not be justified? If so, Ward was guilty."

The speeches of General Wolfe, Governor Crittenden and

Tom Marshall, were extremely able, and passages very eloquent. The beautiful quotations from a visit to the scenes of the Saviour's crucifixion, and an allegory of the creation of man, were used with effect; where Justice, Truth and Mercy come and plead with the Creator, saying, "Make him not; he will defile Thy temple. Make him not; he will set at defiance Thy law," and finally Mercy says, "O, make him, Father! and *I will follow* him and *bring him back to Thee!*" These are all brought out in the highly interesting and rhetorical arguments of counsel. Ex-President Hayes was among the distinguished advocates. The trial lasted nine days. There was a defense of *self defense*, and no more.

From first to last this trial is striking and peculiar. The order and courtesy are commended as models of jury practice. To follow in the steps of these distinguished counsel (all of national fame), is a sure road to correct practice. They are safe authority on the art and sagacity of management.

The defense secured a change of venue from Jefferson to Hardin Circuit, and obtained a fair and impartial jury by only one challenge.

The clerk then read the indictment, and the court gave a brief charge to the jury, showing how they should find not guilty or guilty, and, if guilty, to state the degree of murder or manslaughter. Some twenty or thirty witnesses were sworn, showing the quarrel and the shooting, the last words and the death of Butler; the strength and conduct of each, the purchase of the pistol, etc., ending in the character of Ward, which was proven to be excellent by a score of men reaching as high as Geo. D. Prentice, of the *Courier-Journal*, and the Mayor of Louisville.

There was a terseness and directness in the order of the trial seldom equalled. The court admitted the testimony of the *custom to carry arms in Kentucky;* of Robert Ward, a co-defendant, who was present at the shooting (this after long debate). The testimony of Mrs. Butler was singularly impressive. When, in referring to her husband's last words, she covered her face with her veil and remained silent, she was allowed to retire without cross-examination. The following is a sample "passage at arms" by counsel:

WITNESS, *to Mr. Carpenter.*—Attend church sometimes; have been in the Sabbath school a few times.

Mr. MARSHALL—Does the gentleman desire to prove that his witness is an infidel, and that his religious education has been entirely neglected? If so, we readily admit it! (Laughter.)

The COURT—Such questions seem to be unnecessary, and I trust will be omitted in the examination.

Mr. CARPENTER—Certainly, if they are deemed improper. And this seems to be hardly the place for the theatrical performances we have just witnessed.

Mr. MARSHALL—There is a great variety of theaters in this world, and you have performed characters in some of them that are by no means enviable.

Mr. CARPENTER—So have you, sir.

The COURT—I must insist that the gentlemen refrain from remarks of this character.

Mr. MARSHALL—I desire to treat the court with all due respect; but, sir, the gentleman has addressed a personal charge to me, and I felt bound to retort. He has accused me of assuming theatrical airs, which I must certainly repel. Why, sir, my manners are the most natural in the world, and have been too long worn to be thrown off at this late day. And when a personal and insulting remark is made commenting upon them, I need not say that it is offensive.

Mr. CARPENTER—I intended no insult to Capt. Marshall—it was merely a side-bar remark.

The COURT—Let the case proceed without further interruption.

James M. Allen, sworn—Reside in Yazoo City, Mississippi, was in Louisville in November last; on the day of the accident, in the morning, I was sitting in the office of a hydropathic establishment, where I was a patient, when Mr. Sturges entered and said: "For GOD ALMIGHTY'S sake run for a doctor; Prof. Butler has been shot, and is killed!" He ran out, and just then Matt. and William Ward passed the door of the office; I started to Dr. Caspari's office, but saw one of the school-boys before me, and did not go; Gudgel and myself then went towards the school house; in the yard in front of it there were some ten or fifteen boys; went in and made some inquiries; one of the lads was Mr. Worthington's boy—the others I had frequently seen, having often exercised in the gymnasium with them; they were pupils there; I asked where Mr. Butler was; I passed up the steps and shook hands with young Worthington, and addressed the question to him; think he replied that Butler was gone; I then asked how this happened; the boys were all collected around me and seemed anxious to communicate; several of them answered my question, and Worthington, though he did not speak, nodded his head in assent.

Mr. CRITTENDEN—What was the answer you received?

The prosecution objected to the question, contending that the

expressions of the school-boys could not be evidence unless they were identified as the individual boys who had testified here.

The witness had understood Worthington to assent to the statements made by the other boys at the time. The court therefore ruled the question to be legitimate.

Witness—Several boys spoke at once, and replied that Ward came there and cursed Butler; that Butler then struck him and Ward fired; think one of the boys said Butler took hold of Ward.

This testimony, except so far as relating to Worthington, was ruled out by the court.

J. T. Gudgel, sworn—Accompanied Mr. Allen to the school house after the unfortunate affray; Butler had gone, but there were fifteen or twenty boys about there; we inquired how the matter occurred; addressed the inquiry to the whole crowd of boys who were there; did not know any of the boys; five or six answered that Ward had come to demand an apology of Butler; that Butler had refused to give an apology, and ordered him out of doors; all said that Butler had struck the first blow, and Ward had then fired; some of them said Butler had pushed Ward back and nearly thrown him down, and that as he was getting up he fired the pistol.

Mrs. Harney, sworn—Am the wife of Mr. Harney, editor of the *Louisville Democrat*. When I reached home Prof. Butler was already there; I found him lying on the rug in the parlor; the house was full of people; I did not speak to him until some three quarters of an hour after I returned; then had a conversation with him; when I entered the room he raised his hand to me in recognition; I knelt by his side and begged him to be composed; he seemed very much agitated; I told him to be quiet, as much depended on it; that the physician thought it was only a flesh wound, and we hoped he would recover; he said he could not, and repeated the same words; he said, "No, do not be deceived—I cannot live; when I am gone, will you be kind to my poor wife and baby?" He then desired to see Mrs. Butler; he seemed impressed with the conviction that the wound was mortal; I was with him until his death. I brought Mrs. Butler in at his request; he died the same night, between 12 and 1 o'clock.

Mrs. Elizabeth Butler, sworn—When Mrs Harney took me to my husband, he told me not to be deceived—that he was dying; I told him to be calm, that the physicians thought he would recover.

but that every thing depended on his being kept quiet; he said, "No, Lizzie, don't deceive yourself—I am dying;" he thought, until his death, that the wound was fatal. * * *

Witness was here overcome with emotion, and, trying in vain to conceal her tears, covered her face with her veil.

The counsel for the defense declined asking Mrs. Butler any question, remarking that they had no desire to inflict suffering upon her by calling her mind to the details of the unhappy occurrence.

Dr. D. D. Thomson, sworn—Reside in Louisville, and practice my profession there; shortly after 10 o'clock, on the morning of the second of November, was called to Col. Harney's residence to see Prof. Butler; he was deathly pale and faint; several boys were holding him up, and I had them place him in a recumbent position; he asked me if he was not a dead man; I told him I hoped not, but could not tell until I had examined the wound; we took off his coat and tore open his shirt; the wound was on the left side, about one and one-half inches obliquely above the left nipple, it was much burned with powder around it; I attempted to probe it, but failed to do so, being unable to follow the wound.

Dr. L. P. Yandell, sworn—Am a practising physician in Louisville, was called in to see Prof. Butler, on the second of November, shortly after he was shot; he seemed to be mortally wounded; Dr. Thomson was attempting to probe the wound, and when Dr. Caldwell came in, he attempted to assist; the probes did not seem to penetrate the chest, and we then felt and expressed a hope that the wound might not be fatal; shortly after, however, I heard the blood issue from it in a manner that convinced me that the ball had entered the cavity; when I asked the position he was in as he received the wound, he replied that they were clinched; that Ward called him a d——d liar or scoundrel, and raised his hand; that he (Butler) then struck Ward—they clinched, and was immediately shot; the ball passed through a part of the left lung, where the vessels are large; it caused his death.

Dr. —— Muguet, sworn—Reside in Louisville; was with Prof. Butler, after he was shot, on the second of November; went to see him about half-past one o'clock, and remained a short time; went again at half-past seven, and remained until his death; was present at the *post mortem* examination; was well acquainted with Prof. Butler; his right hand was always disabled; he could not open or close the fingers of it.

J. J. Gillmore, sworn—Reside in Louisville; am a gunsmith; on the morning of the second of November last, Matt. F. Ward came into our store about nine o'clock; he asked to look at a pistol; he took it, examined it, asked the price, and told me if I would load it he would take it; I did so; he then hesitated a moment, asked the price of the pair; I told him, and he said if I would load the other he would take the pair; I loaded the other, and he took them; he inquired for small pocket pistols; the pair I sold him were small, self-cocking ones; this pistol is one of the same kind; they are good pistols; suppose they would shoot through an inch plank, two feet from the muzzle; I loaded each of them with powder and ball, and put caps on them; they were fully prepared for use; did not observe whether he put them in his pocket; do not recollect that he said he wanted pistols that were certain, or any thing of the kind; there was some conversation that I do not remember.

Mr. CRITTENDEN (for the defense) here stated that he desired to introduce Mrs. R. J. Ward, to prove a single fact as explanatory of the necessity of this defendant arming himself, if the court deemed it admissible. This fact was, that some months prior to the occurrence of the principal fact they were now investigating, Mr. Sturges, the assistant teacher of Prof. Butler, had become so much embittered against this defendant—

Mr. ALLEN asked the court that, in speaking upon these points, the counsel might be confined strictly to the legal questions, and not allowed to argue the case itself.

Mr. HELM—I am very thankful to the prosecutor for any instruction he may give me. As I am a *young man*, I stand peculiarly in need of it!

Mr. ALLEN—Not at all, sir; but I am well aware that we are swivels here, fighting against twenty-four pounders, and I am desirous that they may be confined as much as possible.

Mr. HELM—Some of your swivels have been brought from so great a distance that I fear they will hardly repay first cost.

Mr. CARPENTER—Should that be the case, it will be our misfortune, not our fault, Governor Helm!

THE COURT—I trust the case may not be impeded by such remarks. They are quite unnecessary.

Mr. HELM—I am aware of it, but when the gentlemen talk about swivels and cannon, I think we have a right to retort.

Mr. MARSHALL—Well, *this* seems to be grape shot! (General laughter.)

The defense now stated that they desired to introduce as a witness, Robert J. Ward, jr.

The prosecution objected, on the grounds that the proposed witness was jointly indicted as a principal, with the defendant, in this case.

Mr. GIBSON cited various authorities in defense of the position.

Mr. CRITTENDEN replied at length, contending that the testimony would be competent, and reading from a large number of authorities, on which he based his argument.

Mr. GIBSON replied, after which

THE COURT ruled the testimony admissible, having first reviewed the arguments offered on both sides. It seemed necessary to a fair investigation of this case, that the witness should be admitted, his credibility being a matter of fact for the jury to decide.

Robert J. Ward, a brother and co-defendant, was sworn, and gave the full details of the affray.

Then followed evidence on the custom to carry arms, as to which

WITNESS said, I do not know.

Mr. WOLFE—Are you not armed now, sir? Did you not arm yourself before you left Louisville?

WITNESS—I shall decline to answer unless I am directed to do so by the court.

The COURT—The witness is not compelled to answer the question unless he sees fit.

Direct resumed—In our efforts to probe, did not follow the ball further than just beneath the skin; was with Butler, with the exception of two intervals, until he died.

To Mr. Wolfe—Prof. Butler remarked, during his account of the matter, "I did not see who shot me."

Mr. WOLFE—You are a member of the Presbyterian Church, I believe, Dr. Thomson?

WITNESS—I am; have been for ten years.

Mr. WOLFE—Are you not a teacher in the Sabbath school?

WITNESS—I am, sir.

Mr. WOLFE—Is it usual for members of the church to carry arms?

WITNESS—I do not know; am not aware of any regulation in the church in regard to it.

Mr. WOLFE—What have you done with those pistols you had on your person yesterday?

The COURT—You are at liberty to answer the question or not, as you please.

WITNESS—I decline answering unless I am under legal obligation to do so.

A specimen of *character* evidence:

Dr. James C. Johnston—Have lived in Louisville about sixty-five years; have known defendant ever since he was a boy; he has always been very remarkable for his amiability of temper and courteous manners to every one; his health has been very precarious for many years; his frame is extremely delicate.

Mrs. Judge Oldham, sworn—Reside about three miles from Louisville; have known defendant for upwards of twenty years; his character for peacefulness and amiability, both as boy and man, has been unexceptionable and excellent.

Mrs. Major Gwinn, sworn—Have known defendant intimately for twenty-two or twenty-three years; he has always been a kind and affectionate son and brother, and borne an excellent character for gentleness and peacefulness.

George D. Prentice, sworn—Have lived in the same city with Mr. Ward since his early childhood; have always known him well from general reputation, and for a few years past by intimate personal acquaintance; have found him as mild, quiet and amiable a gentleman as I have ever known; he has been an invalid for many years, and often unable to go into the streets; have believed him to be a gentleman of spirit—one who would be prompt to resent an insult, but remarkably quiet in his disposition; on account of his attention to letters, his character has been more generally known and discussed than that of most young men of his age; his letters were originally published in my own paper, the *Louisville Journal*, and my connection with him has been frequent and intimate; never heard but one opinion expressed in regard to his disposition; he was very feeble shortly previous to this occurrence, in November; he then walked with crutches.

[Other evidence on the killing, death and character would be cumulative, and is omitted. It would not change the tenor of the story.

A very little reflection on the order of proof will enable a student to follow the steps in a murder trial, from commencement to end, and retain them in memory.]

Mr. Carpenter spoke eight hours to the jury, for the State, in most excellent language, and found its response in the audience, who studied the defendant carefully and waited with breathless anxiety for the stirring words and thrilling sentences of Tom Marshall, the great actor-advocate of the South.

Here began an array of flowery passages and brilliant replies rarely equalled.

[Tom Marshall was born 1801 and died in 1865; son of Dr. Marshall; the nephew of Chief Justice Marshall, a Southern orator of great renown; a relative on his mother's side of the Prestons, Blairs, Browns and Breckenridges, the oldest Kentucky and Virginia families. He was over six feet in height, strong and graceful with all the graces of an orator, wit, humor, rhetoric and eloquence, and for thirty years the most conspicuous advocate in Kentucky. In politics erratic; in habits inclined to intemperance; with a voice clear and flexible; a manner indescribable, at times grave, severe, chaste, and always original and effective. He could move or convulse an audience at will. He was a great master of language, and in early life was an industrious student. He mastered his profession and understood human nature and the effect of evidence and argument. No report of his speeches give his incomparable manner of reaching a jury. He was a genius born to the law.

"They talk of my astonishing bursts of eloquence (he said), and doubtless imagine that it is my genius bubbling over. It is nothing of the sort. I'll tell you how I do it. I select a subject and study it from the ground up. When I have mastered it fully I write a speech on it. Then I take a walk and come back and revise and correct. In a few days I subject it to another pruning and then recopy it. Next I add the finishing touches, round it off with graceful periods and commit it to memory. Then I speak it in the fields, in my father's lawn and before my mirror, until gesture and delivery are perfect. It sometimes takes me six weeks or two months to get up a speech. When I have one prepared I come to town, am called on for a speech and am permitted to select my own subject, It astonishes the people, as I intended it should, and they go away marveling at my amazing power of oratory. They call it genius, but it represents the hardest kind of work."]

Mr. Marshall said, "Gentlemen: In appealing to you, as the representatives of a merciful God, it appeared to me that it would have been quite enough for the gentlemen to consign the prisoner to an early and disgraceful grave in the midst of all his promise and all his hopes, without intruding such a rhetorical display upon him. It appeared to me, that after recommending him to such a grave, or, in case he should escape it, to the whips and stings of conscience on all occasions and in all

climes, and to every horror that a distorted imagination has been able to depict, we might at least have been left to our fate, and spared the infliction of *such* a speech and *such* an appeal. And to crown the whole, you are gravely exhorted, out of simple mercy, to rescue us from the horrible phantoms that have been conjured up, by handing us over to the hangman!

* * * * * * *

"Attention has been directed to the past life of the accused, and this traveled young gentleman is graciously informed that he may commence his travels over again. But the permission is coupled with the assurance that wherever he may go—whether he shall climb the rugged Alps and wander in the regions of Polar cold, or roam through the sunny climes of Italy and France, still every opening flower shall remind him of the flowers he has left blighted at home. Should he seek the blue ocean, we are told that each white cap will remind him of the shroud of his victim, and that in the boom of every surge, he shall hear the rattle of the death shot."

Here follows a scathing review of the testimony throughout, and a running and witty comment on salient facts, with: "What Kentuckian will find him guilty who resented a gross insult to his brother before a class of his peers? Would a true brother have done less? It is not my duty to stir rudely the ashes of the deceased, but I put it in all candor, what *ought he to have done?*"

And so on in that daring, defiant, yet chivalrous good humor, that he swept the audience with him like leaves in the wind. Comment had been made on witness Barlow as a carpenter, and Tom Marshall said, "why, I always consider one *carpenter* as good as another—one brought away off from Campbell County to build a gallows to hang the prisoner on, the other to testify in his behalf!"

"He had the right, and exercised that right of self-defense with which Nature has provided him. But what does this right mean, and how far does it extend? It confers upon me the privilege of beating off any injury or infringement upon those inherent rights with which God and Nature have provided me. It gives me the right to exercise any means, to use any amount of force that may be necessary to repel such attacks. No man has a right to take my life; I may defend it and preserve it at any cost. But this is not all; a man's rights are not confined merely to the preservation of his life. He has others, many others, guaranteed by nature, that are nearer and dearer, and which it is his privilege and his duty to protect. Without these, life itself could have no charms; and had I no other right than the simple

one of existence, I would raise my own wild hand and throw back my life in the face of Heaven, as a gift unworthy of possession!

I maintain that I have as much right to defend my personal liberty as my life; but the force to be used is only that necessary to repel the attack, and to prevent injury. Were this defendant to attack me, and attempt to chastise me, I would have no right to take his life, because he is an invalid, and so far inferior to me in physical strength, that I have no reason to apprehend any serious injury. But with a man of more powerful frame than myself, the case would be different. He has no right to attack me; I have a right to defend myself, and I may use just the amount of force necessary to do so. If I choose I may strike him with my fist. That would show a great deal of game; but if he were stronger than I, it would certainly tend to exasperate him, and render my chastisement six times as severe as it would otherwise have been. Perchance I may be able to seize a bludgeon, with which I can fell him to the earth, and thus protect myself. But if no such means are at hand, will any man, will any Kentuckian, tell me that I must stand and be beaten like a dog, at his discretion? Certainly not. I may repel him and defend myself in any way I can, and if nothing else will prove effectual, I have a perfect right to cut his throat from ear to ear. I may use any amount of force whatever that is necessary; and this, as I understand it, is the law on the subject, as construed, applied and executed, throughout the land. I ask you to look at the facts in this case, and apply the law to them.

Should he die for this? Does this act make it necessary for that young prisoner to be stricken from the roll of living men! Does it render him unfit to live, and a dangerous member of human society?

But if you think to mitigate his punishment, will you immure him within the walls of a penitentiary? Will you cut those flowing locks—will you shave that classic head—will you snatch him from the bosom of his loving family—tear him from the arms of his girl-wife and rudely sunder every tie that makes life dear? Will you do this and call it mercy?

As the representatives of a just and merciful God, if you feel it your solemn duty to punish him, O, let him die! Talk not of mercy, while you inflict upon him a curse for which there can be no human parallel, a punishment to which death is nothing in comparison. No, no! if you talk of mercy, show that mercy the prosecutor spoke of this morning—the mercy of the grave. O, give him liberty or give him death! But the prosecutor seemed greatly afraid of mercy, and again and again he enjoined it upon you to

show none. He thought that perhaps the ALMIGHTY might possess some, but of even that he seemed to be doubtful, and he charged you to beware that not a single feather should fall from the wings of the dove, to contaminate this jury box by its presence.

For the sad event that has occurred, we feel regret—deep, lasting, bitter. If that day's act could be recalled, no man on earth would do so much to reverse it as the prisoner at the bar. We sympathize deeply with the afflicted family, and lament the occurrence that bereaved them. But we have felt, and we feel now, no such stings of conscience as have been described here. We have thrown ourselves for trial upon GOD, our Creator, and upon you, our country; and we have said "Not guilty," to this indictment, because we are not guilty of the crime it charges. The awful consequences of a verdict, such as it is in your power to render, appal us with horror—but mingled with that horror there is no remorse—there are no stings of conscience. Not guilty, we say, living; not guilty, we say, dying, and *not guilty, we will ever say!*

You have heard the character of this defendant proved—and such a character! Did you ever know it surpassed? Could there be one more mild, more gentle, more peaceful, and more universally beloved? Men of all professions and occupations—of every position in life—have testified to the fact that this was true alike of the boy and the man.

As he grew to manhood, perhaps from too close attention to study, his health failed, and he went abroad to regain it. And whatever your decision shall be, he has left behind a monument that will ever place his name high among men of intelligence and of letters. I allude to this volume; I suppose I may not read from it, for the gentlemen might object that it had not been offered in evidence; but it shows how my unhappy client has spent his time. And I owe him much for the gratification I have experienced, as I followed him in his wanderings, on hallowed and on classic ground. I have been with him down the beautiful Rhine, within the ancient walls of Aix-La-Chapelle, up the sluggish Nile, and on Mount Sinai's rugged brow; and, O, if I were permitted to read to you the thoughts and feelings that there swelled his breast, you would realize what a heart you are entreated to crush—what a light of genius you are asked to extinguish forever!

It were pitiful that he should die so young—now in the full flush of his early manhood—one so loved in the social circle, one looked upon so hopefully by the church, one who has proved himself so glorious a genius and so fit to lead the young men of America—it were a pity that he should die, even by the unrelent

ing hand of disease, and when surrounded by all that he loves on earth. But to be cut off thus—in such a cause—to be sacrificed in response to such a wild, insatiate cry for blood as has been raised by this prosecution—O, it were pitiful, it were marvellously pitiful!

I have pleaded this case only by the law and the facts; but were I compelled to ask mercy, was there ever a case in which it could be shown with more propriety? Yet I do not ask you to pardon—there is no occasion for that. I ask you to do your duty, to examine the case carefully, to see if you discover the elements of murder there, and then tell us if you can say that this young man shall die—shall die a felon's death! I know you cannot.

I have spoken long, gentlemen, and perhaps have wearied you. I need not have consumed so much time, for I feel confident that the cause of my client is safe in your hands. I know that others are to follow me, the latchet of whose shoes I am not worthy to unloose; and if I have left any chasm in the argument of this case, I am sure they will fill it up. I thank you, gentlemen, and take my leave.

Gov. Helm followed, in an able and logical speech for the defense, already doubly strong, very largely a legal argument. The concluding words were:

"The case, gentlemen, is with you. I have endeavored to consider it in all its bearings, so far as my feeble condition would permit. I have only sought to explain fairly, both the law and the facts. And now, what are you called upon to do? Will you consign this prisoner—this unfortunate, but noble specimen of young manhood, for the fatal deed of a single hour, to a dark and dishonorable grave? Or, if not, will you inflict upon him that other, but equally terrible punishment? Have you the heart as he now stands, that fearful, insidious disease preying upon him, with one foot on earth, and the other trembling on the brink of eternity, to make him an outcast from the world, and confine him in a felon's prison?

"It would be only to lay him on a couch of suffering and disgrace, from which he would never rise again. It would be only to banish him, during the short remnant of his life, from that kind mother, who, with anxious care and fondness, has ever watched over him, the pride of her heart, and the pledge of her first love; from that gentle, devoted young wife, who is bound to him by ties no less mysterious and vital than those which unite the Siamese twins, and the parting of which must lay them side by side, in one early grave.

"In the name of that wife, in the name of that mother, in the name of simple justice and of common humanity, I ask you to give him back to life!"

The speech of NATHANIEL WOLFE, for the defense, abounds in apt and original matter, caustic and severe on opposite counsel, stinging and sharp in replies, and brilliant in original wit and happy illustrations.

He denied the right of a teacher to whip a child, and said:

"I endeavor to teach my children to love one another, and when they err, I take them apart and kindly tell them of their fault—do not attempt to disgrace and degrade them in the presence of the family. Thus, I hope, they learn to regard their father as a friend in whom they may confide—an adviser on whom they can rely, and his house a refuge and a home, in all their childish sorrows.

"Even if we go back to Greece—that glorious old republic, whose light will continue to shine through the historic page, to the latest ages of time—we shall find that this brutal practice, this relic of barbarianism, was ignored in their schools. Chastisement was then believed, as it really is, the father's prerogative. As so many incidents on this subject have been related by the gentlemen, perhaps I may be permitted to allude to one. Plutarch, in his celebrated 'Lives of Distinguished Men,' tells us of one of his tutors named Amoneus, who, when one of the boys under his charge had done something wrong, took his own son and whipped him in their presence, to reprove them, and to show what he would have done, had the laws of his country allowed it.

"The brave seamen of our navy were once scourged for every trivial offense; but Congress has abolished the barbarous practice, as debasing and degrading to the character of a free man. In the British navy the same is true; and throughout this whole country there is a settled sentiment against this punishment."

He cited the following cases:

In the Jefferson Circuit, a few years ago, Coon was tried for the murder of Shaeffer. The latter had insulted Coon's wife, and Coon went to obtain redress. He told Shaeffer of the insult, whereupon he raised his arm, as Coon thought, to strike him, though it afterwards appeared that his hand only contained a small piece of wood. Coon then plunged a file into him, and it immediately proved fatal, yet the jury sustained his conduct.

The case of Owen, charged with the murder of Haire, caused so much excitement in Louisville, a few years ago, that it was neces-

sary to obtain a change of venue to secure a fair trial. The parties slept in the same bed; in the morning Haire missed some money, and accused Owen of taking it. Owen asked an explanation; it was refused, and he prepared himself with a pistol before they met again. Haire, I believe, also had a pistol, but Owen shot him; and was acquitted on the ground that he had a right to obtain redress for the injury done his character.

The gentleman has given you a Scriptural illustration, comparing himself to David, who, as he tells you, went out to fight against the Philistines, armed only with a shepherd's sling and seven smooth stones. Now we, I presume, according to his comparison, are the Philistines; but the gentleman seem to be rather unfortunate in his Biblical recollections. He must remember it was against Goliath that young David went; and that it was Samson who fought with the Philistines, slaying three thousand of them in one day, and that, too, with the jaw-bone of an ass. And I can only express a devout hope that I am not to meet with a similar melancholy fate, and be ruthlessly slaughtered here, by the same dangerous weapon! (Prolonged laughter.)

Having the jury at his will, he read them two beautiful passages:

"I stand upon the summit of Mount Sinai. What endless food for memory and association in the thought! To trace the course of Moses up to the sacred mountain—to visit the scene where our Lord deigned to hold converse with his servant—to feel yourself on Mount Sinai, upon which rests all that is earliest learned in childhood, and most dearly prized by man, is worth a lifetime's weary pilgrimage. I forgot fatigue, anxiety, and all the weariness of the desert. I could only remember that I was upon Mount Sinai. Go there, if you would feel as your never felt before. Go read, as I have done, the decalogue upon the very spot where Moses received it from the hands of the Almighty. Enter the cleft in the rock into which Moses fled as the glory of the Lord passed by. Remember that fearfully sublime scene, when there were thunderings and lightnings and a thick cloud upon the mount; when Moses brought forth the people out of the camp to meet with God, and the Lord descended upon the smoking mountain in fire; when the voice of a trumpet sounded long, and waxed louder and louder as Moses spake, and God answered him with a voice—and tell me if the memory treasures another emotion like this.

"I have wandered with delight over the battle-field of Wagram, where Napoleon brought to his feet the most powerful monarch of

the world. Leipsic had a melancholy charm for me, as the spot where Fortune united with allied Europe to put down her petted favorite. I felt a deep interest in gazing upon the plain of Waterloo, where that gigantic power expired, which had toppled kings from their thrones and made emperors tremble. These, thrillingly interesting as they were, are but scenes in the destiny of a man. Great as he was, he was but mortal. But Mount Sinai is hallowed by the presence of God himself—it is the first scene connected with the salvation of man through the intervention of his Maker."

Permit me, gentlemen, to read you, in conclusion, an extract from a letter written from that scene of the deepest interest to man the world has ever known—the Mount of Calvary:

"A man's deep emotions on visiting the church of the Holy Sepulchre are chilled, not smothered, by the glare and glitter of the tasteless ornaments and images that load the hallowed spots within. I turned at once to Calvary, and mounted the steps where our fainting Saviour toiled up the rocky hill, when, turning to the women that bewailed and lamented him, he said, in mournful forgetfulness of his own sufferings, 'Daughters of Jerusalem, weep not for me, but weep for yourselves and for your children!' I stood upon the spot where our Lord was nailed to the cross—the rock in which the cross was planted was before me; and amidst the gloom and silence of the dimly-lighted chapel I could almost imagine the fearful scene of the crucifixion, when 'the sun was darkened, and the veil of the temple rent in the midst.' I could almost see the two malefactors that were crucified with him, 'on either side one, and Jesus in the midst.' I could hear the hootings and revilings of the enraged multitude, and that beautiful sentiment of forgiving meekness—'Father, forgive them; they know not what they do.' I could see the crowds of women that had followed him from Galilee, 'beholding afar off,' and witness the fierce determination of the soldiers. I could hear that cry of mortal agony—'My God! my God! why hast thou forsaken me?' And all was over. What could be more impressive than such recollections in such a place?

"My heart was softened even to weakness, and I could almost have wept; for that religious fervor, which even the most worldly may feel on Calvary, was blended in my heart with the feeling of earth most akin to heaven—a son's devotion to his mother. The Bible, from which I read the mournful story of the cross and passion, was her parting gift. It flooded my heart with hallowed associations—thoughts of her and of heaven were blended in my

soul, and purified each other. It recalled the never-to-be-forgotten instruction of my early childhood, when, leaning upon her lap, I heard from her loved lips explanations of the holy events of which I now read, upon the very spot where they occurred. It recalled the recollections of later days, when, side by side, we sat in the village church—the exquisite music of those simple hymns, that we sang from the same book, seemed again to swell upon my ears, and I was a child in feeling once more. And, whatever may have been my course since, those early impressions of piety have never been effaced, and the religious associations connected with those blissful days of innocence I now found had not died, but only slumbered, and but required a sacred spot like this to start into life, linked with a mother's holy name."

Gentlemen, it is impossible that a heart like that of the prisoner, depicted in these lines, is capable of entertaining malice. His devotion to his fellow men, his devotion to his mother, his devotion to his God, all, all forbid the idea that he is capable of entertaining malice against any human creature. The act with which he is charged was the result of dire necessity, it was not an act of willfulness.

Gentlemen, the fate of my client will soon be committed to your hands. What a responsibility will then rest upon you! Life or death is involved in the issue! What inexpressible joy a verdict for life will bring with it! This beautiful world will to him, as well as to those who are bound to him by such tender ties, present scenes of happiness and gladness. But oh, what gloom, what sadness, what misery would a verdict of death bring with it! That young and beautiful wife, the partner of his former joys, the participator of his woes, to know that her husband is to be assigned to an ignominious grave! That mother, whose life has been a life of devotion to him, to have her heart riven by sorrow that can never be subdued—that family and wide and extended circle of friends, of which he is the rose and pride, to be crushed down for ever!—I cannot anticipate such a result. The evidence will not warrant such a verdict, and such an one will not, can not, be rendered by you.

The achievements of this young man in the field of literature are part and parcel of the greatness of Kentucky. The emanations of his mind have added fresh glory to the history of our State, which the patriotic devotion of his ancestry had already rendered so illustrious.

I leave him with you. I have done.

Here followed a long and excellent argument of Governor Crittenden, in a chaste and dignified analysis of the case from end to end. His exordium was graphic and effective on the right of trial by jury, the solemnity of the occasion, and impressive on the leading circumstances. He was convincing in his logic, clear in conclusions, and powerful in his appeals.

[John J. Crittenden was born in 1789, and died in 1863. He filled, during his eventful life, the positions of Congressman, Governor, Attorney-General of the United States under Harrison and Fillmore, was United States Senator, appointed United States Supreme Justice by President Adams, a soldier in the war of 1812; above the medium height, erect, muscular, dignified, with genial and attractive manners; the most successful advocate in Kentucky, a fine lawyer, and a rare judge of men; of superb courage and temper and the highest personal honor. His art was *persuasiveness*. He won his cases by his candor, character, fairness and deferential obedience to the rights of others. He spoke as a gentleman to gentlemen, and never used harsh things to harrow the feelings of a jury. He understood mankind. He was clear. He aimed to be candid and to be comprehended. He could bring tears to his own eyes or his auditors', but they were heart-felt, earnest and honest expressions of his belief. He won his cases fairly.]

Here is a passage of his on self-defense:

But where a man in sudden affray is beaten or assaulted in such a manner as to peril his life, or place him in danger of great bodily harm, when there is no other way of escape, he has a right to kill his adversary, and the law calls it justifiable homicide—killing in self-defense. The law is very tender of human life, and, therefore, homicide, even in self-defense, is spoken of by the English authorities as "excusable rather than justifiable." And thus the definition of it given by Lord Bacon is, "A blamable necessity." Yet though blamable, it is a necessity, and it excuses and acquits the party. It is described as "that whereby in a sudden broil, or quarrel, a man may protect himself from assaults or the like, by killing the one who assaults him." But it must not be used as a cloak for a revengeful and wicked heart, for we are explicitly told that we may "not exercise it, but in cases where sudden and violent suffering would be caused by waiting for the intervention of the law." * * *

After an exhaustive speech to the jury, he concludes:

In examining these facts, may not one judge of them more kindly, and hence ascribe better motives than another? The consideration of the facts and the causes that produced them, is the proper place for mercy to be applied. The law says the murderer shall be punished; but it is your province to ascertain what constitutes the murderer.

You have a solemn duty to perform, and I want you to perform it. I want you to perform it like men—like honest men. I ask your sober judgment on the case, but it is right for that judgment to be tampered with mercy. It is according to the principles of law, one of whose maxims tells you "it were better for one hundred guilty men to escape than for an innocent one to be punished." Is not here your commission for mercy? It is alike your honest minds and your warm hearts that constitute you the glorious tribunal you are—that make this jury of peers one of the noblest institutions of our country and our age. But the gentlemen would make you a set of legal logicians—calculators, who are to come to your conclusion by the same steps a shop-keeper takes to ascertain the quantity of coffee he has sold by the pound. That may be a jury in name, but it is in nothing else.

But I wish to call your attention to another fact that figures in this case. Mr. Carpenter, with more adroitness than Mr. Gibson, but with less scrupulousness, has attempted to create a prejudice against this prisoner, by speaking of his family as aristocratic—as believing themselves better than ordinary mortals. I suppose I feel no personal offense at this, for I have always belonged to that class usually called "poor men." But, in this country, no man can be above a freeman, and we are truthfully told that "poor and content is rich enough." * * *

In conclusion, gentlemen, I beg leave to call your attention to an important consideration, bearing on the whole case, and affording a key, I think, to the heart of this young man. I allude to his general character and disposition through life. I need not recall your attention to what we have shown it; it is all perfect in your recollection. I have no occasion to exaggerate; he has shown, in the clearest and most conclusive manner, a character of which you or I, or any man living, might be proud. As in boyhood, so in manhood. His riper years only exhibited to the world the amiable and lovely and genial traits of the boy, more illustriously developed in the man.

I am one of those who believe in blood, and in consistency of character. Show me a man that for twenty or thirty years has

been kind and honest and faithful in all the relations of life, and it will require a great deal of evidence to induce me to believe him guilty in any instance of a gross and outrageous wrong. You have seen the character of this man, from his earliest boyhood—so kind so gentle, so amiable—ever the same, at school and at college, in the city or in the country, among friends or strangers, at home or in foreign lands. There was no affected superiority. You see how many mechanics and artisans have been his constant associates and friends. With health impaired, and with literary habits—never seen in drinking saloons or gaming houses—his associations with men of all classes—he has ever been the same mild, frank and unoffending gentleman, respecting the rights of others and only maintaining his own. This is the man you are called upon to convict. His act was an unfortunate one, but it was one he was compelled to do. And though he has been misrepresented and reviled and wronged, I trust it will be your happy privilege, by a verdict of acquittal, to vindicate his character in the eyes of all good men, and restore him to that family whose peace, happiness and honor are at stake on your verdict. Your decision must cover them with sorrow and shame, or restore them to happiness that shall send up to Heaven, on your behalf, the warmest gratitude of full and overflowing hearts.

Gentlemen, my task is done; the decision of this case—the fate of this prisoner, is in your hands. Guilty or innocent—life or death—whether the captive shall joyfully go free, or be consigned to a disgraceful and ignominious death—all depend on two words from you. Is there any thing in this world more like Omnipotence, more like the power of the Eternal, than that you now possess?

Yes, you are to decide; and as I leave the case with you, I implore you to consider it well and mercifully before you pronounce a verdict of guilty—a verdict which is to cut asunder all the tender cords that bind heart to heart, and to consign this young man, in the flower of his days and in the midst of his hopes, to shame and to death. Such a verdict must often come up in your recollections—must live forever in your minds.

And in after days, when the wild voice of clamor that now fills the air, is hushed—when memory shall review this busy scene, should her accusing voice tell you you have dealt hardly with a brother's life—that you have sent him to death, when you have a doubt, whether it is not your duty to restore him to life. Oh, what a moment that must be—how like a cancer; will that remembrance prey upon your hearts!

But if, on the other hand, having rendered a contrary verdict, you feel that there should have been a conviction, *that* sentiment will be easily satisfied. You will say: "If I erred, it was on the side of mercy; thank GOD, I incurred no hazard by condemning a man I thought innocent!" How different the memory from that which may come in any calm moment, by day or by night, knocking at the door of your hearts, and reminding you that in a case where you were doubtful, by your verdict, you sent an innocent man to disgrace and to death.

Oh, gentlemen, pronounce no such verdict, I beseech you, but on the most certain, clear and solid grounds. If you err, for your own sake, as well as his, keep on the side of humanity, and save him from so dishonorable a fate—preserve yourselves from so bitter a memory. It will not do then to plead to your consciences any subtle technicalities and nice logic—such cunning of the mind will never satisfy the heart of an honest man. The case must be one that speaks for itself—that requires no reasoning—that without argument appeals to the understanding and strikes conviction into the very heart. Unless it does this, you abuse yourselves—abuse your consciences, and irrevocably wrong your fellow man, by pronouncing him guilty. It is life—it is blood with which you are to deal; and beware that you peril not your own peace!

I am no advocate, gentlemen, of any criminal licentiousness—I desire that society might be protected, that the laws of my country may be obeyed or enforced. Any other state of things I should deplore; but I have examined this case, I think, carefully and calmly; I see much to regret—much that I wish had never happened—but I see no evil intentions and motives—no wicked malignity, and, therefore, no murder—no felony.

There is another consideration of which we should not be unmindful. We are all conscious of the infirmities of our nature—we are all subject to them. The law makes an allowance for such infirmities. The AUTHOR of our being has been pleased to fashion us out of great and mighty elements, which make us but a little lower than the angels; but he has mingled in our composition weakness and passions. Will he punish us for frailties which nature has stamped upon us, or for their necessary results? The distinction between these, and acts that proceed from a wicked and malignant heart, is founded on eternal justice; and in the words of the Psalmist, "He knoweth our frame—He remembereth that we are dust." Shall not the rule He has established be good enough for us to judge by?

Gentlemen, the case is closed. Again I ask you to consider it well, before you pronounce a verdict which shall consign this pris-

oner to a grave of ignominy and dishonor. These are no idle words you have heard so often. This is your fellow citizen—a youth of promise—the rose of his family—the possessor of all kind and virtuous and manly qualities. It is the blood of a Kentuckian you are called upon to shed. The blood that flows in his veins has come down from those noble pioneers who laid the foundations for the greatness and glory of our State—it is the blood of a race who have never spared it, when demanded by their country's cause. It is his fate you are to decide. I excite no poor, unmanly sympathy—I appeal to no low, grovelling spirit. He is a man—you are men—and I only want that sympathy which man can give to man.

I will not detain you longer. But you know, and it is right you should, the terrible suspense in which some of these hearts must beat, during your absence. It is proper for you to consider this, for in such a case all the feelings of the mind and heart should sit in council together. Your duty is yet to be done; perform it as you are ready to answer for it, here and hereafter. Perform it calmly and dispassionately, remembering that vengeance can give no satisfaction to any human being. But if you exercise it in this case, it will spread black midnight and despair over many aching hearts. May the God of all mercy be with you in your deliberations, assist you in the performance of your duty, and teach you to judge your fellow-being as you hope to be judged hereafter.

Counsel would have you tell the Judge of the quick and dead, when you stand at His tribunal, how manfully you performed your duty by sending your fellow man to the gallows! He apprehends that it will go a great way to insure your acquittal there and your entrance to the regions of eternal bliss, if you are able to state that you regarded no extenuating plea—took no cognizance of the passions and infirmities of our common nature—showed no mercy, but sternly pronounced his irrevocable doom. I understand that it would be more likely to send you in a contrary direction. I understand that a lack of all compassion during life will hardly be a recommendation there. I understand that your own plea will then be for mercy; none, we are taught, can find salvation without it—none can be saved on their merits.

I have somewhere heard or read a story from one of those transcendent German writers, which tells us that when the Almighty designed to create man, the various angels of his attributes came in their order before Him and spoke of his purpose. Truth said: "Create him not, Father. He will deny the right—deny his obligations to Thee—and deny the sacred and inviolate truth—crea-

him not." Justice said: "Create him not, Father. He will fill the world with injustice and wrong—he will desecrate Thy holy temple—do deeds of violence and blood, and in the very first generation he will wantonly slay his brother—therefore, create him not." But gentle Mercy knelt by the throne and whispered: "Create him, Father. I will be with him in all his wanderings—I will follow his wayward steps—and by the lessons he shall learn from the experience of his own errors, I will bring him back to Thee." "And thus teach, O man, mercy to thy fellow man, if thou wouldst bring him back to thee and to God."

Mr. Allen, in closing for the People, said:

My experience in criminal trials, perhaps, has been considerably extended for a man of my age; but I can honestly say that I have never seen a jury in any case manifest such patient attention, and exhibit so little levity and carelessness as you have done. It indicates, to my mind, that you appreciate fully the position both of the State and the prisoner at the bar; and that while you receive so readily the great lights which have shone upon the case, you will not reject the feeble glimmer of the one that is yet to come, and which, to the best of my ability, shall only be thrown upon the law and the testimony.

It is the duty of the Commonwealth to take upon herself the whole burden of establishing his guilt, and it is your duty, gentlemen, to construe all reasonable doubts in his favor. You have heard this principle laid down in the vague and general terms of "*all* doubts;" but had the gentlemen read a little further from the old Irish authority he quoted, in the very next sentence he would have found it qualified so as to read "all reasonable doubts."

It is impossible that juries should act on positive certainties. All information you can obtain in regard to the commission of any crime, upon which you are to decide, must be from those who witnessed it; and if one hundred men will swear positively to the same fact, you must even then have some doubt. It is true, you may believe it, and will then have good reason to do so; but the very term belief always implies doubt; knowledge—that no doubt exists. But if, in this case or in any other case, we prove the facts claimed, by good and competent witnesses, it is your duty to convict, even though some doubt may exist, for it cannot come within the bounds of a reasonable doubt.

Governor Helm set out with the proposition that a man with as good character as the defendant, cannot have had the wicked and depraved heart that is necessary to the commission of a murder. I

wish to argue this case with fairness and candor; and I admit freely that I never in my life heard a better character proved, and I never expect to. But the human heart—who can know it? We are told by the volume of inspiration that it is "deceitful above all things and desperately wicked." And however good the character of this accused may be, that fact alone cannot overbalance the clear and conclusive testimony of the case. Character is only to be taken into consideration, for the benefit of a prisoner, in doubtful cases, where the mind of the juror is otherwise left in uncertainty by conflicting or imperfect testimony.

One of my associates has alluded to the great case of Webster. When on trial he proved a good character—nearly as good as that shown by the prisoner at the bar. He proved it by ministers of the gospel as well as ministers of the law—and by men of almost every calling and position in life. Yet he was convicted; and before his execution he fully confessed, not only that he committed the murder to escape the payment of a small sum of money, but that, after he had done the deed, he deliberately cut in pieces the body of his victim, and burned it!

It is called the Code of Honor; and the worst feature of this bloody code is, that it constitutes every man the judge and avenger of his own wrongs. It was this principle that actuated the accused —this motive that caused the awful deed. It was this that induced him, when, as he thought, a member of his family had been insulted, to go and disgrace the teacher, or take his own redress. And, as I have already shown, the insult was only a fancied one; it is the duty of the teacher, when the boy is guilty of any crime, to punish him for it and inform him of it. It is just as necessary for boys to be punished when they do wrong, as for men, when *they* do.

"But," says Governor Helm, "he took the smallest pistol in the whole store—a mere pop-gun—therefore he could not have intended to take life." But you must remember that the size of the weapon only rendered it the more easily concealed—that it was a self-cocking pistol—perfectly adapted to a close fight. And Mr. Gillmore, who sold it, informs you that this "pop-gun," as the gentleman calls it, would send a ball through an inch plank! Does this, or does the result which it produced in the fatal occurrence, indicate that it was not a deadly weapon.

They say, gentlemen, that the right of self-defense is a sacred one—that it has been conferred upon us by our nature and our Creator, and cannot be taken away by human legislation. I cordially agree with them, that the right is a high—a holy– an inestim-

able one. I believe that all should enjoy it and be protected in it. But you should be very careful not to permit men, under the color of self-defense, to commit an outrage—to take measures that must call out an attack—and then, to kill their adversary. I regard this right as highly as any man who has lauded it in your presence; but, gentlemen, as you hold it dear—as you would preserve it sacred and inviolate—beware that you do not suffer it to be trifled with.

Mr. Wolfe puts a strong case to you. He asks, if a man has slandered your family, in a peculiar and most aggravated manner, if you have not a right, under the laws of this land, to go to him, and revile him and curse him; and, then, if he attempts to chastise you for it, to shoot him? I promptly answer, No. If he slander you, the law gives you your remedy, by an action for slander, and does not authorize you to become the judge of your own wrongs. If he slander your family, the same is still true. The law recognizes no right to exercise violence on the part of the citizen, except in case of self-defense.

The remarks of Mr. Allen were continued at length in this manmer, and are both effective and candid. The Court gave a brief and impartial charge to the jury, who promptly returned with a verdict of "*Not Guilty.*" At the announcement of the verdict great emotion was manifested, joy mingled with tears and handshaking, and a prompt motion for the discharge of Robert Ward, which was granted, and dispatches wired to the New York *Herald* and the leading Southern papers.

TRIAL OF MARY HARRIS.

Held July, 1865, at Washington, D. C

This is one of the most romantic of the celebrated jury trials in this country; interesting alike to laymen and lawyers throughout the United States. The story, as detailed by a large number of witnesses, the character of the parties and their relations leading to the final tragedy, and famous trial, can be best furnished through a rather lengthy but truly elaborate and exhaustive hypothetical question, which is a terse statement of facts, and the able

and eloquent arguments of counsel, which give the facts a unique and appropriate shading.

The case was remarkable for its location, the large number of distinguished visitors to the accused while in prison, the "White House bouquet," the singular evidence of a leading counsel sworn for Miss Harris, and lastly, the effect of the impassioned appeal to the jury for mercy, seldom equalled in any argument. The candid, convincing manner of Mr. Bradley, the able and exhaustive logic of Judge Hughes, the caustic remarks of Mr. Carrington, are all commendable; but the speech of Mr. Voorhees was eloquent. The closing argument for the defense by the Senator from Indiana, created a profound sensation; holding the closest attention of all in the crowded court room—filled with distinguished visitors—for two hours, nearly all of which time many in the audience were moved to tears; ladies fainted; strong men wept like children; others leaned forward to catch the slightest syllable, and hung spell-bound upon the speaker's words.

Personally, Mr. Voorhees is tall, erect, strong, florid faced, with light hair, dark eyes, highly rhetorical in style, often vehement and powerful in voice and gesture, at times reaching to a pathetic and touching delivery. His large form and general bearing give him a commanding and distinguished appearance. He wins by power, pathos and sympathy. There are times, in his loftiest flights, that his hearers will shudder and turn pale; but in this trial he grew tender and pathetic, and often persuasive. It was an ideal opportunity. The picture of a frail young girl, fair and affectionate, who was herself an appeal more eloquent than counsel's words. The ingenious allusion to the little bouquet that Mrs. Lincoln had sent to the prison cell from the White House was handled with graceful skill by the artful advocate. Nothing was lacking to give to the scene all the interest and attraction of a splendid tragedy—a scene to be remembered for a lifetime.

Mr. Voorhees has the requisites of a western orator: Earnestness of manner, point and vigor of speech, a rapid, sparkling stream of overflowing language, both thrilling and pleasing, moving and magnetic—few men possess such gifts of forensic eloquence.

The much-abused plea of emotional insanity was then in its infancy. The Cole-Hiscock and the Sickles cases had been won by it; but the public had not wearied of this singular defense. It has since grown more in public disfavor. But by it, hundreds are cleared. The public reasons from guesses; science often reasons otherwise. In a case like Mary Harris', the argument was apt and

effective. If ever a mind could be lost, there was occasion and room enough to argue a reasonable doubt.

This case is reported at length, through the arguments of the learned counsel, as being peculiarly an example of how far the surrounding circumstances affect a jury's verdict. The admission of evidence is shown to be exceedingly liberal, the testimony of Mr. Bradley, a prominent counsel for the defense; the reference to distinguished visitors at the jail; the broad scope of insanity reaching back to years of correspondence; the management of witnesses—dropping a bad one, and crowding a willing enemy with curious questions—all show skill and ingenuity of counsel.

But the climax of the case is the eloquent appeal of Senator Voorhees. Nothing more beautiful in legal literature can be read than many portions of his pathetic and eloquent picture of the growth of a pure girl's first affection, confidence and love. When the orator says: "He had carried her to the highest pinnacle of happiness and hope, she stood upon the summit of a glorious expectation; and all around her sunshine and gladness!" and when he added her own words of pathos: "O, Mr. Bradley, you should have seen me then! You should have seen me then; I was so happy!" scores broke out in sobs and tears. By using every art—forgetting not one single touching thought—the orator swayed his hearers like forest limbs in the wind, until he came to those magic words: "*In the name of Him who showers his blessings on the merciful, who gave the promise to those who feed and clothe the hungry strangers at their gates: Unlock the door—unlock the prison door, and bid her bathe her throbbing brow once more in the healing air of liberty!*" From that moment, such a spell came over all that they felt her freedom in the air.

This statement by counsel to experts embraces a graphic history of Mary Harris:

A little girl not more than ten or eleven years of age—still in the dress of children of that age—attracts the attention of a man almost old enough to be her father. She had very few advantages of mental or moral culture. He is an educated man, experienced in the business and affairs of life. They are thrown into daily association, he being engaged in mercantile business, and she, the little girl, in a millinery and fancy store, convenient to his place of business. He plays with her as a child; she sits on his knee and receives and returns his caresses. Two years or more pass by, during which this intimacy continues between them, he being the trusted friend of the lady by whom she is employed, and is daily

at the store. He fails in business, and then comes to keep and post the books of the little girl's employer. He has a difficulty in the church of which he was a member, and is expelled, and goes to this child, just budding into womanhood, for relief and sympathy. She believes him to be good—good to her, at least—but persecuted and reviled by the world. He is a Baptist; she a Roman Catholic. She now forms new associations. Prepared by his culture and instruction, she is admitted into the best and most refined and cultivated society of the city in which she lived. He leaves that city to seek employment elsewhere, and opens a correspondence with her, which he cautions her to conceal from her employer. She is eminently open and truthful, yet at his bidding does conceal the correspondence. Her parents discover that this correspondence is going on. Her father is enraged Her friend's visits then are prohibited. She counsels with one of the most intelligent and cultivated ladies, of ripe years, and having daughters of the age of the patient, and that lady consents to permit them to meet at her house. He is now the declared lover of the patient. Step by step, intimacy between her and this lover had ripened into esteem, regard, and on her part the full confiding love of a woman who trusted everything to the man she loved; and she is formed, moulded, trained by his plastic hand in her habitudes of thought, morals, and manners. She is absorbed into, and in all things controlled by him. She yields him her homage; they are engaged to be married. He keeps her constantly advised of his plans and schemes. Fortune frowns on his efforts and he is too poor to marry. He prevails on her to leave her father's house and come to him in a distant city and seek employment there, in order that she may be near him; and she yields. Shortly after she returns to her home. Again he prevails upon her to leave the parental roof and come to him, and she does so.

Her nervous organization is fine and delicate; her mental faculties largely and well developed; her sense of female pride acute and strong. She is pure and virtuous, and continues so to this day. Her bodily health is remarkably good. She has more than ordinary flesh; a fine, pure complexion, and good vision. Her temperament is full of life and spirit, and her life happy, joyous and gleeful. She has few associates, and those principally married ladies, or those older than herself. Her chiefest pleasure is her correspondence with him. Thus nearly five years are passed. In the meanwhile three different times had been assigned for their marriage, and as often it had been deferred by reason of his want of means or employment.

He is about to leave the city where he is residing to come to Washington in search of employment. Their correspondence had begun November 1, 1858, and continued down to the spring of 1863. When he is thus about to leave her, the last seen of them together at the time, she was sitting on his knee, and he playing with her curls.

Six months elapse. In the meanwhile he has succeeded in obtaining employment in one of the public offices here. She lives on in happy hope, and the summer passes without a ripple on her summer's sea.

He left his home in March. On the seventh of August, 1863, she received a letter from him, asking where he could see her. He had an interview with her, during the greater part of which he held her hand. What passed between them is not known, for no one heard what was said; but they seemed to part as ever—friends. On the eighth of September following she received another letter, which she believed was written by him; and, on the fourteenth, a second, both begging her to meet him at a house of ill-fame. She inquired, and received clear proof that these letters, though written in a disguised hand, were written by him. On being convinced of this fact, she was greatly distressed, and became wild in her excitement. A few days after this she discovered that four days after the receipt of the first of these letters, and one day after the receipt of the second, he was married to another lady in the town where the patient resided. Within less than a week after this discovery, on the first return of the period mentioned in the hypothetical case put by the prosecuting attorney, she was so sick as to require the attendance of a physician. A skillful physician was called, and he treated her for the physical disease, but knew nothing of her personal history, nor did he witness any mental disturbance. The sickness lasted but a few days, but her spirits were gone, her health was broken. She became silent, moody, melancholy; her flesh and strength wasted; her nights were spent in sleeplessness and tears. She went about her daily duties as usual, but with a broken spirit. Thus passed on two or more periods. At last her physician directed that she should lie in bed till after she had had her breakfast. She then slept, as she had from the first of May, 1863, in the same bed with the lady in whose employment she lived as clerk, and in the same chamber with that lady's sister. There was a vacant chamber adjoining, in which there was no fire, and, against their remonstrances, she would get up from that warm bed and chamber, in the inclement climate of Chicago, in mid-winter, and go into that adjoining chamber in her nightclothes only, and sleep on the

bare floor. During one of these periodical sicknesses, while the patient is still under medical treatment and required by her physician to keep her bed till after breakfast, in the winter time, in the high northern latitude of Chicago, and while she is occupying the same bed with the elder of the two ladies with whom she lived, she stealthily got up from the bed—leaving the other, as she supposed, asleep—softly dressed herself, and approached the bedside of her friend, and, believing she was still asleep, said, in a low tone, "I must leave you." The friend threw her arms around her neck and said: "Why, where are you going?" She answered, "I wanted to take a walk on the lake shore." It was then but the gray of the morning; not quite day. The friend restrained her forcibly, and prevailed upon her to undress and go to bed.

Again, at another of the periods of her sickness, she was sitting at table with her two friends, her employers, between whom and herself there existed the most intimate relations of true and warm friendship and regard; the patient was sitting nearest the younger of her two friends, to whom, as nearer her own age, she always and undeviatingly showed warm affection, and with whom she had never quarreled; while thus sitting, the patient reached out toward this young friend, remarking, "Don't you want to read some fine letters?" or letter. The friend recognized the handwriting of the man who had so long corresponded with the patient and had been engaged to marry her; and she was familiar with all the facts as to the manner in which that engagement had been broken off, and the attempt made by him to get the patient into an assignation house. She had been with the patient at the time, and had never lost sight of her or been separated from her to this time; and seeing the letter in the handwriting of the same man, she replied, "No; I never want to see any of his writing, or any other such a fellow's; and I never wish to hear Burrough's name mentioned again as long as I live." In an instant the patient snatched up a carving knife and attacked her friend, who with difficulty made her escape, while the elder sister, a large and strong woman, restrained the patient, who is small and delicate, and was then wasted by sickness; and after a severe struggle of several minutes, succeeded in getting the knife from her. The sister, who had fled, returned after a while, and the patient then insisted upon and attempted to get out of the window and to go upon the street, and was forcibly restrained by the two sisters. The elder, then thinking relief to her mind would be quicker by yielding to her, at last opened the door, and let her go into the street. It was late in the afternoon. She also directed the younger sister to follow and keep the patient in sight, but not

to approach her or let her see her. She did so, and saw her, after wandering around two or three blocks, stop a street car, advance to it, put her foot on the step, then turn away and walk quietly down the street. She followed her, and saw her enter the private, or ladies', entrance of the principal hotel in that city; then returned and reported to the elder sister. The two sisters then went for a gentleman, whose wife was a very warm friend of the patient, and who himself had much influence with her, and they three went to the hotel and endeavored to prevail upon the patient to return home. They failed and left, leaving that gentleman to look out for her. Night was approaching, and she came home alone, composed, and "clothed in her right mind." This attack, or exhibition of violence, was the longest in duration that had then occurred.

In another return of her periodical sickness, without cause or provocation of any kind, she struck the younger of the two sisters several repeated blows over the head with the window-brush—a heavy brush used to cleanse the store windows.

At another time, during another sickness, she struck with a pincushion, that had a piece of brick in it to keep it in its place, a lady customer in the store, who had given her no sort of provocation.

At another time, whether during her periodical sickness or not does not appear, she purchased in Chicago a small-sized Sharpe's revolving pistol, with a case of cartridges, which she kept openly exposed in her trunk; and when asked by the elder of the sisters what she purchased that for, she replied, "Many ladies carry pistols;" and added her fear that the man who had deceived and deserted her, and his brother, had a plan to seize and carry her off, and she had this for her defense.

She employed an attorney and counsel in Chicago to sue the man who had deserted and endeavored to entrap her. A writ was issued, but he could never be found. Her counsel urged and advised her to compromise. She refused, saying it was not money she sought, but the vindication of her character; that she had suffered in reputation, and desired to have that cleared up. She urged her counsel to come to Washington with her, and sue him here. He declined; and declined because he says her love seemed to have been turned to hate by the effort to get her to that assignation house; and when she recurred to that, she became so excited that he thought it would be dangerous for her to meet him, while at all other times she was calm.

She herself then came to Washington from Chicago, alone, and

without a protector, to institute a suit here. She visited the department where he was employed, and learned that he had that day gone with his wife to Chicago. She took the return train and travelled without stopping, and when she reached Chicago found that his wife had arrived there, but he had not.

The two sisters removed from Chicago to Janesville, Wisconsin. She accompanied them. But change of scene, while it relieved and diminished the periodical exhibitions of a disturbed mind, did not cure it. Her life was the same; a brooding melancholy pervaded it. She performed all her duties as clerk and saleswoman, but she shunned society, and her spirits were gone; and periodically, sometimes not every month, but in two months at furthest, these exhibitions were revived, but with less violence, until the latter part of December, 1864, when, while sitting with the two sisters, and a third sister who had been at work making an expensive patch-work silk quilt, she seized the quilt and began to cut and tear and destroy it. It required great force to get it from her, and she was taken to her chamber and securely fastened in. Prior to that, the elder sister, in hope that it would bring relief to her, had consented to furnish her with money to come to Washington, in order to institute a suit here for breach of promise.

On the first of January, 1865, she left for Washington, by the way of Baltimore, where the friends of the two sisters resided. She traveled alone. On reaching Baltimore she went to a respectable boarding-house, where she was unwell with a bad cold, and was detained for three weeks, and then had her periodical sickness. On Saturday, the twenty-eighth of January, she communicated to a lady who occupied the same room with her, the history of her case. She had with her a large package of letters, which she said she had received from Burroughs. She told of his attempt to get her to that bad house. She read parts of the letters, extending, as she said, through five years. She stated that she was coming to Washington to see for herself whether he was here, before she consulted counsel; that she had attempted once before, and failed; that she had the name of a lawyer here whom she was to employ; that her sole object was to vindicate her fame and reputation, which had been injured by his desertion of her and his marriage with another. She spoke of him with tenderest regard, and said that until these last letters were written, he had been her best friend—more than a father to her; but his desertion had injured her reputation, and she intended to sue him only to vindicate her character. This lady lay awake until after two o'clock Saturday night; then went to sleep, leaving the patient still talking, and

reading and handling that bundle of letters. On Sunday night the same thing occurred, except that she was then arranging the package of letters which she was to carry with her to put into the hands of counsel. Long after midnight she was thus engaged; her roommate went to sleep, leaving her thus occupied. She had made an arrangement with this lady to return by the three o'clock or half-past four o'clock train, and accompany her to a lecture to be delivered that evening by Henry Ward Beecher. The lady who kept the boarding-house was a party to this arrangement, and procured for the patient a return ticket. In the morning the small Sharpe's pistol and a bundle of letters were lying on the bureau. She had shown the pistol to the lady who occupied the room with her, and made no concealment about it. While making her preparations, she was called suddenly by the keeper of the boarding-house and told she was late. She threw the bundle of letters into the trunk, and, instead of them, put the pistol into her pocket, and hurried down stairs; in company with the keeper of the boarding-house went down to the cars, and thence came to Washington alone. She went to the Treasury Department, inquired for and opened the door of the room in which he was, and saw him distinctly. She was seen by at least one of the inmates of the room so distinctly as to enable her to identify her here in court, and who was so struck with her appearance at the time that she half arose to ask her to come in, when the patient closed the door.

An hour or more after this, as the clerks were leaving the office, he came near, or passed her in the passage. She drew the pistol and fired. No one saw her fire, but there were three persons near by who saw her instantly after the shot was fired. The shot took effect on the deceased, who turned, saw her, exclaimed, "O my God!" and fled. She then cocked her pistol, leveled it in the direction in which he fled, and when he was about twenty yards from her fired a second time, without effect, and he disappeared around a corner of the hall in which they were. She then turned and walked quietly down stairs and out of the building. She was very pale, very calm, very quiet, and there was a remarkable expression in the eye. She was arrested just outside of the building and taken back into it, and placed in a room with a policeman either at the door or in the room. By this time a justice of the peace had got to the room, and on his telling her he was a justice of the peace she immediately handed the pistol to him. Up to that time she had not shed a tear; she paced the room in violent agitation; tore her hair; knelt on the floor and sprang up; knelt to the justice and was raised by him more than once; her face was convulsed, but

she shed no tear. Mr. McCullough, the present Secretary of the Treasury, came in and spoke to her. She asked if Burroughs was dead. He said he had often on the stage seen representations of mental agony, but he never witnessed the reality till then. She was still tearless. He fixed her attention for a moment and put two questions to her: one whether Burroughs had wronged her in any other way; the other whether she was a virtuous woman. She answered both rapidly, and relapsed instantly into the same excitement. To the latter question she replied, solemnly and clearly, "As God is my judge, I am." She was on her knees, clinging to his clothes. He raised her more than once. Her exclamations were, chiefly, "Why did I do it;" or, "how could I do it;" "I loved him better than my life;" "I would have died for him," etc., etc. The policeman was present during this interview. She was committed to jail, and he says that when on her way to the jail she told him that Burroughs had caused her to be driven from home and friends; that he had taken her to a bad house and had seduced her; that she had procured that pistol and came here to avenge the injury, and that she had done so. He understood that she said she had got the pistol just before she left home, and came directly here for that purpose. The policeman cautioned her against making any statements, yet she persisted in doing so. During the whole time she was greatly excited, and when they reached the jail she was so exhausted that she had to be supported by him and others into the jail.

For days after her commitment she paced the room in violent agitation. By the latter part of February she had calmed down. Two friends, a gentleman and his wife, from her old home in Burlington—persons of education and large intelligence—came to see her, the lady passing the greater part of her time for a week in the prison. She was so changed they would not have known her had they not conversed with her. She was changed in appearance, mind, and manner. This was during her periodical sickness. In the latter part of March, during that condition her pulse was about 110, and her hands were cold. She spoke incoherently of the death of Burroughs.

On its recurrence in April, as on the previous occasion, she showed great insensibility to cold. Her pulse was nearly 120; the back part of her head very warm, and her hands as cold as if they had been in water. When speaking of any matter connected with this charge, the pupil of the eye was so dilated as almost to cover the iris. At times the face was fixed, and the eye fixed on

vacancy, as in, or similar to, cases of catalepsy. She did not believe Burroughs was dead; she said she saw him there; had frequently seen him in that chamber. She was with difficulty calmed down, and then she became cheerful. After a brief space the excitement returned; the pulse rose to near 120; the same condition of the face and eyes returned; she talked incoherently. This continued for half an hour or more, when she became composed.

On the return of her sickness in May, the same physical condition existed as in April, but in a much more excited form. Still greater mental disturbance was disclosed in her language and acts. She said she would not stay any longer in that prison; that she was going out; that bars could not restrain her. She exhibited great violence of manner. She fancied she heard dreadful cries and voices and shrieks. This occurred again in a less degree on the next day, and on the third and fourth days after that. Her conversation and language on these occasions showed that she thought and spoke of Burroughs as then alive, and she spoke of him in terms of endearment.

In June, at the periodical return, there were but slight changes from her normal condition. During the intervals the patient is entirely possessed of her faculties, but is generally very quiet, and oftentimes melancholy—with a temperament altogether changed from what it was up to the time of her disappointment in love.

To the Doctor. Q. I will now ask you whether you think she has been, at any time up to this period, the subject of mental or moral insanity? A. I have no hesitation in saying that, having reference simply to the hypothetical case so minutely detailed by the counsel, Mr. Bradley, that the person labored under a deranged intellect, paroxysmally deranged, produced by moral causes, and assisted or increased by a physical cause, derangement of the uterus.

EXTRACTS OF EVIDENCE.

SHOWING SKILL IN EXAMINATION AND MANAGEMENT OF TRIAL.

Louisa Devlin, sworn:

By Mr. BRADLEY. Q. State where you were residing in the spring of 1863? A. I was at Chicago.

Q. Were you engaged in business there, and if so, in what business? A. I was engaged in the millinery and fancy business there.

Q. State if you removed from Chicago at any time, and where you went? A. I moved from Chicago in July, 1864, to Janesville, Wisconsin.

Q. State if at any time you became acquainted with the defendant, and if so, when and where? A. I became acquainted with the defendant in March or April, 1863, in Chicago.

Q. State if she ever came to reside with you, and the circumstances under which she came? A. She told me she had come to Chicago to look out for a situation.

Q. Did she obtain one, and if so, with whom? A. She did. I employed her the first of May, 1863, as a clerk.

Q. State whether she has or not resided with you ever since, until her present visit to Washington? A. Yes, sir; and she resided with me until she came on to Washington.

Q. It is necessary, Miss Devlin, for the jury to understand the relations which subsisted between you. I will ask you whether she occupied the same chamber and the same bed with you? A. Yes, sir; until she came here.

Q. What was her position under you? A. She was a clerk.

Q. State what was the condition of the health of Miss Harris during the first five or six months; and after she came to live with you? A. Her health was good.

Q. State what was her temper and disposition during that time? A. Her temper was good and her disposition also.

Q. How as to her spirits? State whether she was lively or melancholy? A. She was very lively in disposition.

Q. What did you observe in regard to her going into society? A. She went into no society whatever, except that that I was in, There were very few that we associated with.

Q. Did you at any time, during the period that Miss Harris was living with you, see the deceased Mr. Burroughs? A. I did. I saw the deceased twice at our boarding house, in March, 1863, where she boarded.

Q. Was she boarding at the same house with you? A. Yes, sir. I saw him, also, twice at my store during that summer.

Q. State whom he came to visit at that boarding house, and to whom he paid his attentions? A. The first time I heard him in the hall at the boarding house, he asked for Miss Mary Harris; and when he came to my store he asked me for her.

Q. Did you see them at any time during the interview between them? A. Yes, sir; I saw them both during the interview at the boarding house, and in my store.

Q. Did you learn from him or her, when both were together at that time, whether he was paying his attentions to her or not? A. I never had any conversation with them.

Q. Did you at any time become aware of the fact that she received letters from him? A. Yes, sir.

Q. Did you ever see them! A. Yes, sir.

Q. Did you have an opportunity to read the letters, so as to become acquainted with his handwriting? A. Yes, sir.

Q. State whether, after she had been residing with you some time, you observed any change in Miss Harris; and state about the time when you observed such change? A. Well, the change was after the marriage of Burroughs, in September, 1863. Previous to that time the cheerfulness of character which I have described, and kindly disposition continued.

Q. You observed no change in character before the time of which you speak? A. No, sir.

Q. State as accurately as you can how that change established itself? A. After the receipt of these anonymous letters, and feeling satisfied that it was Burroughs who wrote them, she became almost frantic, and at such times she would not know what she was doing or saying. During that night she commenced to cry, and continued crying almost incessantly for two or three days.

Q. How long did she remain in that condition! A. For many weeks. That is, continued so almost incessantly for two or three days, and then at intervals for two or tree weeks; sometimes every night, and sometimes two or three nights in a week.

Q. Did she, during that time, continue to occupy the same bed with yourself? A. Yes, sir.

Q. Do you recollect whether you called in the aid of any physician at that time, and if so, who? A. I did about a month after that time—Dr. Fitch, of Chicago.

Q. Up to the time you thus called in Dr. Fitch, had you noticed anything in regard to her sleep—whether she slept soundly or not? A. She slept but very little.

Q. State whether, after Dr. Fitch had been called in, and during the winter of '63–64, you remember any remarkable incidents in her conduct; and if so, repeat them as far as you can? A. When Dr. Fitch prescribed for her, one of his prescriptions was, that she was to sleep long in the morning.

Q. Before or after breakfast? A. After.

Q. She was to have her breakfast in bed? A. Yes, sir. One morning, when I had scarcely perceived it was daylight, I saw her dressing. I said nothing; and supposing me to be asleep, after she was dressed she came to the bed, and leaning over me, said: "I have to leave you, but I am sorry to have to leave you." I put out my hands and caught her around the neck, and asked her what she

was going to do. She would not tell me. I insisting on knowing, she then said she was going to have a walk on the lake shore.

Q. Was she quiet in her manner at that time? A. She was rather insensible. She looked to me as if she did not know what she was doing or saying. When I caught her around the neck, I thought she was going to run out of the room. I then got her to undress herself and get into bed.

Q. Do you now recollect what period of the year that was? A. It was in November.

Q. After that, do you recollect anything remarkable in her conduct that happened during the same winter? A. Shortly after, she went into the yard one day with a large window brush, and struck my sister two or three times over the head, without any provocation whatever from her.

Q. Do you remember any other incident during that winter! A. Yes, sir. She was not feeling very well one evening, and she called me to the bedside, and held me by the wrists. I begged her several times to let me go; but no; she held me tighter, seeming to have more strength than usual. She held me for about a quarter of an hour. That she did several times.

Q. Do you remember any other incident during that year, and before you went to Janesville? A. I remember of many instances where she commenced to tear up books, clothing, and anything that she could lay her hands on. At another time she ran at my sister with a carving-knife, to stick her. That was the second Sunday in January, 1864.

Q. Do you know what had passed between them just before then, and what was the subject of conversation? A. No, sir. We were at dinner, and without anything being said that could at all offend her, she got up and ran at her with a knife, to stick her.

Q. You did not hear your sister make any remark to her yourself, before this attack with the carving knife? A. No, sir. My sister often told me that she was crazy.

Q. How did you manage to prevent her striking your sister with the carving knife? A. I held her by the shoulders. Then she tried to leap out of the window into the street. I had to open the door and let her go, but sent my sister out to watch where she went. She at first ran around the street, not apparently knowing where to go, but at last went into the Tremont House. I went and tried to get her home, but she would not come. It was then near dark; and when it got dark she came home by herself.

Q. Was that the evening you got Mr. O. H. Harris to go after her? A. Yes, sir.

Q. He is no relation of hers, as I understand? A. No, sir.

Q. Do you know of any subsequent instances of excitement before you went to Janesville? A. Yes, sir; many. One little instance that happened at Janesville, some eight or ten days before she came down to Washington, I remember particularly.

Q. That was last December, then? A. Yes, sir. My sister (not Jane, but another sister), having opened a handsome silk quilt that she was piecing, to show it to us, Miss Harris looked down at it, then took hold of it, and commenced tearing it.

Q. Describe what kind of a quilt this was. A. It was a fancy silk quilt, pieced.

Q. What did she say when she took hold of it? A. She did not say anything. She seldom ever spoke when she was in those excited ways.

Q. How was she prevented from tearing that quilt to pieces? A. I took it from her, and then succeeded in getting her into her room, when she halloaed repeatedly, "Let me out, until I spread all the preserves in the house over the carpets."

Q. State whether, on such occasions, you required any assistance in holding her, or whether her strength was the same as usual, or not? A. Yes, sir; when in these spells, I had oftentimes to have assistance. Her strength was much greater on such occasions.

Q. Now, we will go back to 1863. You say you have seen Mr. Burroughs' handwriting often enough to be able to distinguish it? A. Yes, sir.

Q. Were you in court yesterday, when the letters from Burroughs to Miss Harris were read? A. I was.

Q. Do you recognize them as any of the letters you heard read? A. I recognized them all.

Q. State whether this letter, dated Chicago, August 7, 1863 (handing witness the same), is in the handwriting of Mr. A. J. Burroughs? A. It is.

The letter was admitted, and read by Mr. Bradley, as follows:

CHICAGO, August 7, 1863.

DEAR MOLLIE—I am again in town for a few days, and wish to see you. Drop me a note to Box 5982, stating where I can see you.

Very truly,

A. J. BURROUGHS.

Q. State whether you saw that letter at or about the time it was received by Miss Harris, and where you saw it? A. I do not rec-

ollect where I saw that letter, but she read me the letter, though at the time I did not see the handwriting.

Q. Now, look at this envelope and the letter therein inclosed (handing witness the same), and state whether you saw it at or about the time of its date? A. I saw this on the day she received it.

Q. In whose handwriting, in your judgment, is that letter? A. In my judgment, it is in the same handwriting as the others—Burroughs.'

Q. In the meanwhile, or immediately or shortly after the date of that first letter, of seventh of August, had you seen Mr. Burroughs, and where did you see him? A. I saw him about five or six weeks before he was married; the date I do not know. He called at my store to see Miss Harris.

Q. State whether or not he had any interview with Miss Harris at that time? A. Yes, sir. He remained in my store then with her for about an hour, or an hour and a half.

Q. Did you see him at the store at any other time? A. Yes, sir; I had seen him at the store once before.

Q. Are you able to say Miss Harris never saw him after this interview of which I speak? A. Never that I know of.

Q. State whether or not she was constantly in the store for months before the receipt of this letter? A. She was.

Q. Could she have left, so as to have had an interview with him anywhere? A. No, sir. She could not have been gone an hour without my knowing where she was. She and I went and returned from the store, and also remained and slept together.

Q. State, as well as you can recollect, all in regard to this last lette I showed you—this letter of September 12; where you saw it and all the circumstances connected with it? A. This letter I saw when it came in the house. Miss Harris brought it from the postoffice. She read it, and then remarked, "Who in the world could have written the like of this to me?" She read it first to me, and then I looked over it. I went and inquired what kind of a house it was; and, when I found out what sort of a place it was, I proposed to answer the letter, and find out who had written it.

Q. Did she, or you, or any one that you know of, write any answer to that letter? A. I wrote such answer, and signed her name.

Q. Just state, in regard to that letter, whether that is, or not, in the handwriting of Mr. Burroughs? A. Yes, sir; I think it is.

[Witness was handed letter dated twelfth of September, 1863, the handwriting of which she identified as that of Burroughs.]

Q. State when and where you first saw that letter? A. This Miss Harris also brought in from the postoffice.

Q. Did you see her open it, and see the contents of the letter? A. Yes, sir.

Mr. WILSON—What is the date of that? A. Twelfth September.

The letters referred to were then read, and offered in evidence. They are as follows:

CHICAGO, September 8th, 1861.

Miss MOLLY HARRIS, *Chicago:*

DEAR MOLLY—I am aware that it is stepping somewhat beyond the bounds of true propriety for a comparative stranger to address a note to a young lady, requesting her to meet him, but my hope is that you will excuse the presumption and accede to my request. I have had the pleasure of seeing you several times, but never have had the honor of an introduction. Now, my dear Molly, I have some things to say to you which I know you will be glad to hear, and I know of no better way to say them than for you to meet me, say on Friday, September 11th, at 94 Quincy street, at one and a half o'clock in the afternoon. I am perfectly well acquainted with the lady who keeps the house, and I know we can talk there without interruption. You will, perhaps, have some hesitancy in coming, but you need not have, as I can assure you my sole motive in requesting the interview is that we may become acquainted, and that mutual friendship may result from it. I am confident I can convince you with a few words of conversation that my sole desire is to be your friend, and I think a meeting would do us both good. Will you come? Do.

If you would rather I would see you at some other place, write where, and I will come. If you think it improper to meet me, I hope you will at least answer this note and state your objections.

Your friend,

J. P. GREENWOOD.

CHICAGO, September 12, 1863.

DEAR MISS MOLLY—Your favor of Thursday was duly received, and I was sorry to read that you could not come at the hour I appointed. Unfortunately, I had a previous business engagement at half-past three o'clock, which is my excuse for not coming. My engagement was of such a nature that it was almost impossible for me to neglect it. I should have been most happy to have seen you. I have been absent from the city since Friday night; have

just returned this evening, and I now embrace the first leisure moment to say to you that I will see you on Tuesday, at half-past two o'clock, at the place formerly designated (94 Quincy street), provided it is perfectly satisfactory to you. I am very anxious to cultivate your acquaintance, which I think will result to our mutual good, and I hope you will grant me the privilege of proving to you that I desire only to be your friend.

I will here say I have had the pleasure of seeing you several times, but never have had an introduction.

If you cannot come at the time I have appointed, please say by note when you can come; or, if you prefer seeing me at some other place than 94 Quincy, if you will be kind enough to state the time and place I will, if possible, see you.

Your friend,

J. P. GREENWOOD.

Q. I understand you to say that you wrote the answer to that, and signed the name of Miss Harris? A. Yes, sir.

Q. What did you do with the answer to the letter of the eighth? A. I mailed it myself.

Q. Can you recollect whether or not you gave any instructions to the postmaster in regard to that letter of September 12, 1863? A. I showed the envelope and the address to the clerk in the post-office, and told him to look particularly at the person who called for that letter, and describe him to me when I called. He said he would do so. I told him to look particularly at his hand.

Q. For what purpose did you give that instruction to the clerk? A. For the purpose of identifying the person who wrote the letter.

Q. Did you call at the postoffice at any time; and, if so, how soon after you had deposited that second letter? A. I deposited the letter on the twelfth, the day it was written.

Q. When did you call for the answer? A. I called for the answer on Monday, the fourteenth.

Q. Was that the next day? A. I deposited the letter on Saturday, the twelfth, and on Monday, the fourteenth, called for the answer.

Q. Who, if anybody, went with you when you called for that answer? A. I went first myself.

Q. Did you afterwards go again the same day? A. Yes, sir.

Q. Did anybody then go with you? A. Yes, sir; Miss Harris.

Q. State what passed between you in her presence in regard to the person who got that letter? A. He described the man to us.

He said he was a man who weighed about 170 pounds; that he had black hair, a heavy black beard, a rather pretty hand for a man of his size, was of medium height, and on his finger wore a set ring.

Q. Did he describe the ring? A. He did. I do not remember the description, however, but Miss Harris turned round and said, "That is the ring I gave Mr. Burroughs?"

Q. Do you know whether or not, after this description was given, a photograph was exhibited to him? A. Miss Harris handed the clerk the photograph.

Q. Is, or is not, that the photograph (handing witness a *carte-de-visite*)? A. That is it.

Q. What did he say when that was exhibited to him? A. After looking at it, he said, "Well, yes," and then hesitated; but afterwards added, "I do not know, as the beard on this is higher than he wore it." I asked him how much higher. He said, "Well, I guess something about an inch."

Q. Did he say anything about the dress? A. He said that it might be the same person; that he could tell more accurately if this person was in the clothes he appeared in when he came to the postoffice. He said the person who called for the letter was in citizen's dress, with a heavy outside coat on.

Q. Miss Devlin, you have seen him often enough to know whether that is his photograph or not? A. Yes, sir, it is. I saw him in his military uniform.

Q. Where did you and Miss Harris go after the interview at the postoffice? A. We went home.

Q. Describe to the jury, as well as you can, what effect was produced upon Miss Harris by this information. A. She got very much excited, and said she never thought he would turn out to be such a rascal.

Q. Do you know, of your own knowledge, whether or not that same day she started to go out to the place where she supposed Mr. Burroughs to be? A. I went out on that same day myself (Monday, the fourteenth), to call upon the Rev. Dr. Burroughs, to know from him if his brother was in town.

Q. After making this inquiry, what was done with Miss Harris that you know of? A. Miss Harris, when she learned that he had been in town, was more confident that it was him.

Q. Do you know whether she went herself to Dr. Burroughs and took letters; and if so, what letters? A. She said she would go the next day and return his likeness, and all the letters she had of his, to Dr. Burroughs, and would let him know what a great rascal his brother was.

Q. Did she leave your house? A. She did

Q. Did she take anything with her? A. She did; all the letters.

Q. Did she take the two anonymous letters also? A. Yes, sir.

Q. How long was she gone? A. I could not say exactly, but she might have been gone over two hours.

Q. When she returned did she bring back all the letters, or not? A. She brought them all back. She said she showed the anonymous letters to Dr. Burroughs, and he tried to persuade her to think that it was not his brother who had written them She then said he acted in such a strange manner towards her, his hand trembled, and she thought there was some plot between him and his brother about the affair. She did not tell him she had these other letters, but concluded to bring them back again. It was on the fifteenth of September she went there. She also told me that she saw A. J. Burroughs coming in in the cars as she was going out; that he poked his head out of the cars and looked at her.

Q. You mean the horse-cars running out to the University? A. Yes, sir.

Q. Do you know whether she went with any one else; and if any one, who, to make further inquiries before she had gone to Dr. Burroughs, as to the identity of the person who wrote these letters? A. Yes, sir; my sister and Miss Harris went to the assignation house on Quincy street.

Q. Was that before or after she had been to Dr. Burroughs? A. Before. It was the day that I went out.

Q. State whether, when she gave you an account of her interview with Dr. Burroughs, she stated that she had learned from him that his brother, A. J. Burroughs, was in Chicago? A. She said he said his brother was in Chicago for some time, but that he was not in Chicago at the time the first letter was written. He was not in Chicago on the eighth of September, and that he had left the second day before that for Washington.

Q. Do you recollect ever having seen a pistol in the possession of Miss Harris? A. Yes, sir.

Q. State about what time—as early a day as you can recollect—when you saw that pistol in her possession. A. It was some time last fall; I cannot tell as to the day or the month.

Q. State where and under what circumstances you saw it. A. I asked her what she had done with some money that I knew she had had. She did not tell me, but said she had bought something. A few days afterwards she showed me the pistol, and told me that was what she had done with the money. I asked her what she had bought it for. She said she was not the only lady who carried a

pistol. Shortly afterwards she said to me that she believed Dr. Burroughs and his brother had some plot against her. Whether she said it in reference to the pistol or not, I do not know. It was during that same day she told me.

Q. State what she said about that. A. I asked her what plot they had? She said it was to pick her up on the street and run away with her where she would never be seen.

Q. Did you ever see any loose cartridges or powder in her trunk? A. Yes, sir.

Q. At what time was that? A. About the same time that I saw the pistol. I said to her, you do not know how to use it, what did you buy it for? She admitted she did not know how to use it; and then showed me these cartridges as belonging to it.

Q. Did you ever hear of her practicing with it in any way at all? A. No, sir. I do not think she knew how to charge it.

Q. Between what streets is No. 94 Quincy street? A. I think it is between Monroe street and Adams. It is a small, very narrow street—a kind of alley.

Q. Did you or not make inquiries as to the reputation of that house? A. I did.

Q. What is its general reputation? A. Bad.

Objected to by the District Attorney, and objection overruled.

Q. Did you communicate to Miss Harris, or did she with you ascertain what the character of that house was? A. I ascertained and told her. I told her that I was informed it was one of the worst assignation houses in Chicago.

Cross-examination:

By Mr. Wilson. Where did you reside before you went to Chicago? A. In Baltimore. I resided there nine years.

Q. Where did you reside prior to that time? A. In Ireland.

Q. When did you go to Chicago? A. In March, 1863.

Q. What members of your family went with you? A. One sister—Jane.

Q. Where was your place of business in Chicago? A. No. 186 Clark street.

Q. Where was your residence? A. I boarded on Monroe street. I forget the number. It was the fourth house from Clark street.

Q. About what time precisely did you make the acquaintance of Mary Harris, and under what circumstances? A. I met her in that boarding-house about a week after I went to it; and I went to it in the latter part of March, 1863.

Q. Who introduced you to her? A. The lady of the boarding-house.

Q. Had you ever known or seen her before that time? A. No, sir.

Q. What was the name of the lady who kept the boarding-house? A. Mrs. Lacey.

Q. How far from the boarding house was the store? A. Not more than a block.

Q. Who were her friends there? A. She did not have any friends that I know of, other than the few acquaintances she formed in the boarding-house.

Q. What books and newspapers was she in the habit of reading? A. She did not read much, except newspapers.

Q. What newspapers particularly? A. Well, I do not know that she read any in particular. She read any she got, I guess

Q. What were her habits as to attending church? A. She attended her church regularly.

Q. Did you attend the same church? A. Yes, sir.

Q. How often during the week? A. Every Sunday.

Q. How often during the day? A. Once or twice a day; some times three times.

Q. Did you ever attend on week days? A. Not usually.

Q. Did she have any attendants—any beaux, any admirers? A No, sir.

Q. Did you ever know of her going out into society—to parties? A. She has been to the theatre a few times; that is all.

Q. Who did she go with? A. Some of her friends from Burlington.

Q. Young gentlemen? A. Yes, sir.

Q. Who were they? A. I have heard their names—been introduced to them; but really I have forgotten.

Q. How many times do you suppose she went to the theatre? A. Only five or six times a year.

Q. Did you go with her? A. Sometimes I went with her.

Q. Did you ever, during that time, see any exhibitions of ill-temper? A. None at all.

Q. Did you ever hear any impatient or hasty remarks during that time? A. No, sir.

Q. Did you ever know of her being particularly unwell during that time? A. No, sir; only once she had a sore throat.

Q. Have you heard her make any complaints in regard to her health during that time? A. Yes, sir; a little.

Q. Was there any difference in her behavior at such times? A. No, sir.

Q. Any change in her spirits? A. No, sir.

Q. Had you during that time heard her mention the name of Mr. Burroughs? A. Yes, sir. She told me she was going to be married to him in July.

Q. When did she first tell you that? A. I could not say exactly; but a few weeks after I became acquainted with her.

Q. How often did she repeat it? A. I do not know how often; but a great many times.

Q. What else did she say to you about him? A. Well, I cannot recall all she said; but she said a great deal.

Q. Express regard for him. A. Yes, sir.

Q. How frequently was he mentioned? Every day? A. That I could not say; but perhaps sometimes every day, and sometimes two or three times a week; very often, anyhow.

Q. And you read all his letters that she received? A. I read a great many of them. Whether I read them all or not I do not know.

Q. When did you see Mr. Burroughs? A. I saw him a few days after he came to the boarding-house and called on her.

Q. For how long a time did you see him? A. He remained about an hour.

Q. Were you present during the whole time? A. I was only present five or ten minutes.

Q. When did you see him again? A. At the boarding-house, in March or April.

Q. When again? A. In my store.

Q. When was that? A. I could not say what month it was when I first saw him at my store, or what day of the month. It was sometime during the summer.

Q. Who did he call to see? A. Miss Harris.

Q. Did he see her? A. No, sir; she was not in.

Q. When did you next see him? A. In my store, about five or six weeks before he was married; that is, before I saw the marriage published.

Q. When did you see the notice of his marriage? A. A few days after it was published.

Q. Did he see Miss Harris this last time when he called? A. Yes, sir.

Q. Where? B. In my store.

Q. Were you present during the whole interview? A. No, sir; but I was in view all the time.

Q. Did she go out with him? A. No, sir.

Q. How long was he there? A. From an hour to an hour and a half.

Q. In the front part of the store? A. Yes, sir.

Q. When did you see him again? A. I did not see him again.

As a sample of letters read in evidence, the following will suffice:

Letter dated Sunday, June 11, 1859. No place named and no signature. Letter addressed to "My dear, dear Mollie." He advises her to be more careful of her health, and gives her a full history of his pecuniary matters and some pecuniary difficulties.

Letter dated Monday, June 26, 1859, 9 p. m. No place mentioned and no signature, but ending with, "Dearest girl, good-bye." The letter is addressed to "Dear, dear Mollie." He intimates in this letter that she did not wish to be addressed as "little Mollie," for she now wore long dresses. But he says he cannot divest himself of the thought that she is still the "little Mollie" who sat upon his knee and twined her arms about his neck, or who sat beside him, and about whom he twined his arms and lifted her up, and could have carried the precious burden to Paris. He only expressed the fear that she would feel too big to sit again upon his knee and kiss him.

Letters dated Thursday, June 30, 1859 (no place), and addressed "Dearest girl;" Sunday, July 2, 1859, and addressed "My dear little Mollie;" Tuesday, August 2, 1859, and addressed to "My darling little Mollie;" Tuesday, August 14, and addressed to "My dear, dear Mollie." In all of these letters the writer speaks to the prisoner in the most endearing terms. He expresses his love for her, and gives her very good advice. He speaks of going to Pike's Peak, and also of his pecuniary matters. In one of the letters he invites her to meet him in a sort of surreptitious manner at Mount Pleasant.

The following letter was read in full, and is published as giving a fair indication of the letters subsequently written to Miss Harris by Burroughs:

"Monday, August 22, 1858.

"O! My Dear Little Rosebud:

* * * * * * * * * * * * *

How am I to thank you for such a favor? O, joyous surprise! Glad source of delirious joy!

Many times I had longed for your picture, and let my imagination dwell upon the receipt of it, but durst not ask you for it, for reasons I will give you if we ever *meet—not now;* but it is the more

grateful, coming as a surprise of inexpressible delight. Really, Mollie, as I returned from the post office after receiving it, I felt so light I could with difficulty keep the ground; I could scarcely avoid flying. I wanted to button-hole everybody I met, and show them what I had got; and it required all the sense of propriety I could command to keep myself from doing so.

O! that *beautiful* picture! beautiful! beautiful! beautiful! And my beautiful! beautiful Mollie! What can I now say for her? I cannot *say*—words fail me. Could I see her, I might, perhaps, express *faintly* what are my feelings, as reawakened by such visible testimony of her loveliness.

O, Mollie, Mollie! you have turned my dry, sterile, old bachelor's heart into a gushing fountain of glad emotion, and warm, genial affection; and Mollie—dear, darling Mollie—is the source and *end* of all. Would I had a hundred Pike's Peak's fortunes to lay at her feet, and the affection of a hundred hearts to lavish upon her. If "*another Mollie*" were to contest the claim to my love, she would stand but a poor chance *now*, if *not before*. When you were remarking concerning the change (*improvement*) that had taken place in your personal appearance, were you trying to make me understand that you had added to your already redundant stock of beauty? I did not fully take the hint then; I understand now. Nature has surpassed herself in bestowing new charms when the measure was already full, running over, and Mollie herself is taken by surprise at her own new excellencies. I understand it all now, and a most effective way have you adopted to bring the *fact* to my comprehension, and as modest and winning as effective. Your beautiful picture! I have to look at it the last thing before I put out the light at bed-time, and the first thing in the morning.

And many times during the day do I look again and again at this beautiful shadow of *a more beautiful substance*, and each time draws forth some fresh exclamation of swelling admiration.

Do not, my dear Mollie, let that accursed blotch on your neck be left to mar such a beautiful person as yours. You have neglected it already too long. Do so no more.

Perhaps, dear girl, you will think me extravagant and excessive at my expressions of delight at the receipt of your picture; perhaps I am fulsome, *nauseating* even. But remember the circumstances. A man would justly be thought a fool, who, going to the town-pump, would clap his hands and dance with wild exclamations of delight at the sight of water; but on the desert, where water had not been seen for many long, weary days, he would be thought perfectly sound, and all would rejoice with him. Were I with you,

enjoying the richer favor of your presence, though I would receive your picture as a precious treasure, yet I would not go quite crazy over it, but would seek to exhibit good common sense. As it is, away off in the wilderness, among Arabs, hideous to behold, and worse to mingle with, I am like the man in the desert at the sight of water. So, under the circumstances, I hope you will excuse me, dearest, *if I do plaster it on rather thick.* I would not resort to gross flattery of your personal appearance, though your charms were those of Venus (and I do not think them short of it), for I possess too much of sincere regard for your best interests to turn flatterer, and injure you with extravagant praise. I would rather tell you of your faults, and show forth my regard and appreciation of you by the unmistakable evidence of duty faithfully performed

"Faithful are the wounds of a friend, but the kisses of an enemy are deceitful."

If I speak warmly in your praise, it is but the free gushing forth of uncontrolled feelings, and you know by experience may ring the din of hated chiding in your ears, and make you wish—O! so much! it might but cease. But when I chide you, Mollie, I would rather take you in my arms, and soften the harsh accents by the soothing caresses of true, kind and warm affection; for I am not a tyrant nor a bear in disposition; neither would I be the fitful cat, that utters her fondness in tones of winning tenderness at one moment, and plants her claws to the quick into her darling pets the next. But I would be as I have professed, your true friend; in advance asking pardon for his many failings. Will you believe me, Mollie? and will you understand me, as I make my imperfect efforts to express my sentiments; while I protest I could tell you a —— sight better if I could see you! And, my dear, dear Mollie, shall I not see you at Ottumwa the first of the month? Dear girl, I want to urge you to come, if at all practicable, and don't let small considerations prevent you, and come in such a way as not to be tied up to somebody else, so to prevent our being together most of the time, mind you.

I broke my promise, and did not write "Sunday," but it was not because I had not intended to; but because I could not get a minute to myself. To-day you will excuse me. A. J. B.

Hugh McCullough, sworn—I saw Miss Harris in one of the rooms of the Treasury building, upon the floor where the body of Mr. Burroughs was lying. I think it is the first room on the left as you enter the eastern entrance. I think a police officer was in there at the time. It is possible he might have left the room, but

my impression is that he remained all the time. He was certainly there most of the time. The conversation on the part of Miss Harris was chiefly in exclamations. I put but few questions to her. I listened to her rather than carried on the conversation. I think the first question she put to me was, "Is he dead!" At that time, my impression is, that Mr. Burroughs was still breathing. I went out, and returned to her soon after with the information that he was dead. Miss Harris was much excited, and uttered such exclamations as—"Why did I do it? Why did I do it?" I put some questions to her in regard to her acquaintance with Mr. Burroughs. In the course of the conversation, she informed me that she had known him for many years; had been engaged to him. I asked her if Mr Burroughs had done her any other injury than the violation of his engagement. She exclaimed, with a great deal of emphasis, that he had not. I put the question to her, "Are you a virtuous girl?" "Yes, as God is my witness," was her answer. That is about the amount of the conversation that took place. She also said to me that she had come up to Washington for the purpose of prosecuting Mr. Burroughs for a breach of promise of marriage. I saw the pistol. It was not more than fifteen minutes from the time I first saw her in that office till she left with the officer. Perhaps eight or ten minutes after Mr. Burroughs died, I thought it was best she should leave, and she herself seemed desirous to do so. I accompanied her to the carriage, and she was taken by the police officer to prison. I engaged the carriage for the purpose of having her taken to the prison.

Cross-examination:

I had never known or heard anything of her before. I knew Mr. Burroughs after he came to Washington. He came to my bureau—I was then Comptroller of the Currency—in the spring of 1863, and applied for a clerkship. I don't recollect when he became a clerk, but I think it was in the latter part of that year. Had no particular personal social relations with him, though I knew him very well, but my relations with him were not more intimate than with the balance of the clerks. Miss Harris, while making the ejaculations I have referred to, answering the questions I put to her, etc., was deeply excited, and seemed to be in despair—in a frenzy. I think, as I came in, she dropped on her knees. I know she put her hands upon my coat with great energy, as she asked the question regarding Mr. Burroughs. I do not recollect the character of the expression of her face, except that she was deeply moved. I don't think she shed any tears. It seemed to me her agony was too great

for tears. I don't think she was flushed, but pale, or rather, pallid. I did not take notice of her eye, but her whole manner was striking and impressive in the extreme. I recollect I fixed her attention for a moment, and put questions to her; she answered as if she comprehended them—answering clearly and coherently; but immediately after giving the answer, she would return to exclamations, pacing the room, and exhibited every indication of being perfectly overwhelmed.

Q. Describe to the jury her manner when she said she was a virtuous girl. A. That is rather difficult, as I am not an actor. I recollect I told my wife I could now realize the difference between real grief and honor, and what we had been in the habit of seeing upon the stage. I cannot exactly describe her manner. She was much moved, ejaculating, "Why did I do it?—oh, how I loved him; why did I do it?" and such like. I never witnessed an instance of greater excitement from moral or mental affection of the mind. This was a new case to me, and a particularly interesting one. The next morning, I think it was, I took Mrs. McCullough down to the jail with me, and, with Mr. Beale, the warden, went to her cell to see if she needed any aid. Mrs. McCullough felt interested in her We found a gentleman from her own State had taken charge of her wants, and we therefore felt that there was no further necessity for interference on our part, or for any proffer of assistance to her. I found Miss Harris much in the same condition in which she was at the interview of the afternoon before. She was pacing the room as upon that occasion, and her exclamations were much of the same character.

Q. You never saw her after that tension of mind had passed off? A. She was still excited at my second interview with her, but not so much so.

Q. State whether, from what you have stated, you were able to form any judgment as to the condition of her mind, and whether she was then capable of acting as a reasonable and responsible being?

Objected to by the counsel for prosecution. Counsel desiring a few moments to look up certain authorities on the subject, the argument was deferred until after the examination of the next witness.

AN ATTORNEY WHO SWEARS WELL.

Joseph H. Bradley, sworn:

By Judge Hughes—Please state to the jury how long you have known Miss Harris, and whether your acquaintance since you have

known her has been intimate or not. A. I saw Miss Harris, I think, the third day after her imprisonment. I was applied to take charge of her case, and declined on the day after her arrest, and persisted in that declination until I saw her; and then I undertook her case to the extent only that I should see proper preparation made for a defense, although I would not undertake to try the case in court. Subsequently I became her counsel. For the first month or six weeks I saw her very seldom, and until the latter part of February, when I went with Mr. Phelps to see her and found Mrs. Phelps there. I thus became acquainted with her. I do not think that up to the latter part of February I had been to see her but two or three times. I have made one species of insanity particularly a matter of study, and that induced me to attend more especially to the condition of Miss Harris; yet I did not see her until the latter part of March, for I was very much engaged in court. Between the twentieth and thirtieth, circumstances occurring at that time, called my attention more particularly to her, and after that time I did not see her frequently until the twenty-fifth of April, if my memory serves me right. In the meantime I had made several visits, and she had had a very violent attack of erysipelas in the head. During this attack, I having myself suffered more than I knew anyone else to suffer from the same cause, saw her repeatedly. I think I saw her three days in succession during that attack.

Q. Please proceed now and state any facts tending to illustrate the condition of Miss Harris' mind bearing upon the question of insanity; and if you have kept any notes, just give the whole account in a narrative form.

Mr. Bradley then read from his notes as follows:

My attention was directed to observations of the facts indicating the condition of the mind of Miss Harris at my first interview with her, when she was under such excitement as to attract the attention of every one who saw her. And after that, and looking to the preparation of her defense, I saw her with Dr. Nichols, and made repeated visits to her, mainly to see whether she recollected the incidents of her life, and talked rationally about them. Various things occurred sufficient only to keep my attention aroused until some time in the last part of March, after the twenty-fifth, and before the first of April, when on calling, I found her in some excitement, which was exhibited more in her evident desire to talk about Burroughs than I had observed before. Some one had sent to her a newspaper, or piece of a newspaper, containing an account of a seance or session of biologists, in which it was reported that

the spirit of Burroughs had been evoked and appeared, and the conversation between the medium and that spirit was given. She showed it to me; commented upon it; asked me if I had faith in or even doubts about that science.

She was nervous and excited. I felt her pulse. It was over 110. The top of her head was so warm as to be unpleasant, and yet her hands were cold. The pupil of the eye dilated so as to cover the iris very nearly, leaving only a band, as it were, surrounding it. She talked of Burroughs or his family—his brother, I should say, rather—and his (Burroughs') wife, during the greater part of this interview, and that with a manner showing no consciousness of having done wrong to any one but his wife.

Mr. and Mrs. Phelps, of Iowa, who knew her well, were here in the latter part of February or first of March. He was attending to, or rather waiting for, some case in the Supreme Court, and I visited her with him, and found Mrs. Phelps there. Of course, we—Mr. Phelps and I—talked freely of the matter; and perhaps what he said caused me to notice more accurately her manner, appearance and conversation.

I remember but one thing of any particular note. While we, all four of us, were talking quite pleasantly about some incident, Miss Harris suddenly broke in on what we were talking about with some matter wholly irrelevant, and began after a moment to relate something to us, or rather to Mrs. Phelps in particular, when the latter said, "Yes, Mary, you told me about that a little while ago."

* * * * * * * *

He continued reading notes at length:

I sat down, leaving her standing. She advanced rapidly towards me, wringing and twisting her handkerchief, and saying, almost fiercely, "I am not going to stay here any longer, Mr. Bradley. I am going out—I am. I won't stay. I want you to take me out, Mr. Bradley."

I replied: "Yes, Miss Mary, that's all right; I don't wonder at it. You have had a long and hard time of it, and I would like to get you out."

"Then take me out—take me out now. I won't stay here a minute."

"Well, wait a minute, till we pack up your things."

"I don't care about the things; I am going now."

I said: "But look at those bars, and"—

"Bars—bars," she said, "what do I care for bars? Do you think they could keep me? Haven't I a will, and what are bars then?"

But, I said, "I could not squeeze you through them; and the

only way will be to put you in my pocket, and so pass through the guards. We must wait, and make no noise to arouse their suspicion. Sit down quietly for a little while, and tell me all about it." During this whole time (and more passed between us, much of which I have not noted, and do not now recall), she moved rapidly or stopped suddenly for an instant, yet all the time nervously twisting her handkerchief. She now took a seat by me. I felt her pulse; it was about one hundred and twenty. I tried to catch a look into her eyes; the pupils were dilated as before; her hair was deranged. I arose after a minute, and said, "Let me apply that bay rum and water." Took her handkerchief, wet it with the mixture, applied to the temples. Her forehead was as cold as marble. The top of her head, back of the main suture, was so hot as to be uncomfortable to the hand. I wet the handkerchief and laid it on that part of her head. She sat as still and motionless from the time I arose till I had done this, as though she were a statue.

I then sat down by her, took her hand, and spoke gently to her. I said, "Now tell us all about it; what has happened?" Her eyes were fixed, as I had observed them before. She glanced at me and around the room rapidly, and said in a low tone (she had previously spoken with great excitement), "Mr. Bradley, I can't stay here; I can't sleep; I have not slept for two weeks; as soon as I begin to close my eyes I am roused up; the cry of murder is ringing in my ears; it comes from the passage; it is in the room, with most horrid shrieks of pain, cursing, and dreadful language; and overhead a crowd of men are stamping and shouting and yelling; and all around me are the most dreadful noises. I can't stay here; I won't stay another night. Let them take me out and hang me; that's all they can do. Let them do it now." By this time she had become greatly excited. Her pulse, which had fallen considerably, had risen again. She attempted to rise, but I restrained her, and said, "Sit still; wait a moment; you haven't told me all yet; I must know all, Mary, before I can advise you. You know and believe I am your friend; that I intend to take you out." She sat still, looked at me for a moment, and in a most plaintive voice said, "Mr. Bradley, do you think I am a very bad girl? I have prayed to God to forgive me. I do believe he has forgiven me; but indeed I never meant to do any human being any harm. Do you think Mrs. Burroughs hates me?"

I tried to soothe her, and, falling into her own vein, by degrees the excitement subsided, a tear welled up and filled her eye, and hung on the lid. I wiped it off with my own handkerchief. She started immediately, and said, "No, no! not so; let me get another

handkerchief." That was followed by a choking sob, the tears began to flow freely, and she was relieved for the time. We talked sometime about indifferent matters, when again her face became clouded and gradually fixed, and her eyes settled with a firm and fixed look into vacancy; the pupils dilated as before; her figure as rigid as her face. I spoke to her, but had no reply. Presently she said, "Yes, I loved him; oh! how I loved him! and how she must hate me. I don't like to be hated; I never harmed anybody; it's me that was hurt, and they tóld lies about me." And then she shuddered and sighed again. I said, "She does not hate you." She turned to me the saddest face I ever looked on and said, "How do you know; you do not know her; you did not know him. I knew him for seven years, and he loved me; I know he did; and he loves me now. He don't love her as he did me. He has loved me ever since I was a little child.

It will be noticed that Mr. Bradley skillfully keeps his strong points often before the jury.

Mrs. E. A. Flemming, sworn:

By Mr. Wilson—I reside at No. 142 Lexington street, Baltimore. My acquaintance with Miss Harris was on the sixth of January last. She came to my house to board. She said her business was to go to Washington; that she was not very well, and she was stopping in Baltimore for she did not know how long. Her object in going to Washington, she said, was to collect money for the Misses Devlin—the ladies by whom she was employed. That was what she told me the first evening she came there. Miss Devlin used to do business in Baltimore, before going to Chicago. The prisoner remained at our house until the thirtieth day of January, the day she came to Washington.

Q. State what she said with regard to her expenses.

Objected to by counsel for the defense. Withdrawn for the time being.

Q. State what her habits were while visiting you. Whether or not you know from her own statement, of her frequently visiting places of amusement; and, if so, state with whom? A. No, sir; she did not visit any place particularly. Well, she used to go out occasionally to evening entertainments.

Q. In whose society? A. That of Mr. Devlin, brother of the lady with whom she was engaged. He was the only gentleman she ever went out with.

Q. State what she said subsequently to the day you have men-

tioned regarding her visit to Washington. A. She said she intended to come down and sue an old lover for a breach of promise. That she had been engaged to him for seven years, and that he had married another young lady, but had corresponded with her up to within a month of his marriage. She thought what induced him to marry this lady in Chicago was the fact of her having money. Her object in instituting a suit she said was merely to clear herself and let the world see that she was a virtuous girl.

Q. Did she assign any other reason for bringing this suit? A. Well, she said something about two anonymous letters that she had received, signed Greenwood.

Q. Did she say anything further about the lady he had married? A. She merely said that the father of this young lady was very wealthy, and she had understood and believed that Mr. Burroughs loved her, but married the other one because she was rich. She always held him, Mr. Burroughs, in very high estimation—always speaking very well of him.

Q. State what she said in regard to the delicacy, the modesty, or propriety of Mr. Burrough's treatment of her?

Objected to by counsel for the defense. Objection overruled and witness directed to answer the questions.

A. She said that she had always received the treatment of a father from him, and looked up to him as such, putting the utmost confidence in him. He had never wronged her, she said.

Q. State what she said in regard to being still in the employment of the Misses Devlin and as to the payment of her expenses by them?

Objected to by counsel for the defense. Objection sustained.

Q. Will you state whether you observed on the day the prisoner left Baltimore, anything remarkable in her deportment? A. I do not know. I did the evening previous to her coming to Washington. The Rev. Mr. Dudley was at the house, and while he was playing a hymn on the piano in the parlor, she got up, picked up one of the ornaments in the parlor, and went round to take up a collection. I thought that very strange conduct.

Q. Did you observe that she was at that time unwell, or complained of any disease, and if so, state what? A. Yes, sir. She complained very much of her throat and complained of being very weak. She had very little appetite.

Q. Did you observe anything else that was remarkable in her conduct? A. Yes, sir. Sometimes she would be sitting alone, apparently engaged in deep thought, and then she would get up and all at once commence to sing a love song—

"First she loved him as a brother,
And he doubted her when her love was stronger."

Then she would come to where I was, and appear to be in very good humor.

Cross-examination:

By Mr. BRADLEY—I went to the cars with Miss Harris and gave her my ticket. She was to return that evening. We were to go to a lecture together.

DROPS A BAD WITNESS QUICKLY. AN EXCELLENT RULE.

Dr. John Frederick May, sworn:

By Mr. CARRINGTON—Q. 1. You are known as a physician who has been practicing in this city for a great many years. I desire to have your opinion upon a hypothetical case, which I will state. It is as follows:

In the case of a young woman of a highly nervous organization and vivacious temperament, and who has suffered from a disappointment in love, there is observed at intervals of greater or less regularity, at monthly periods, the following symptoms: irregular and insufficient sleep, depression of the spirits, and melancholy, outbreaks of violence of the following character, attacking a friend with whom there had been no previous quarrel, with a broom, and on another occasion with a carving knife, throwing a pin cushion at a customer in the store in which she was employed, the cutting or attempted destruction of a piece of fine needle work belonging to a friend, awaking at an early hour in the morning and saying to a room mate that she must leave her, and was going to walk upon the lake shore, insensibility to cold, and shedding tears. State how frequently you have noticed in your practice such symptoms in cases of hysteria, or dysmenorrhœa, and whether upon such symptoms you would infer the insanity of the patient?

A. It is impossible for me to say how frequently I have seen some of the symptoms enumerated. I have in cases of hysteria seen some symptoms like these, and others have been absent in such cases. Dysmenorrhœa often occurs without being accompanied by any such symptoms at all—without any symptom that has been enumerated; but as far as answering such an abstract question as that, I should say that if those symptoms occurred at stated periods, the periods mentioned here, that they were symptoms of nervous excitement, dependent upon uterine irritability. I could

not call that a case of insanity in the general acceptation of the term "insanity."

Q. 2. I will now ask you this question. A young woman of a highly nervous organization and vivacious temperament, having exhibited the symptoms stated in the previous question, and suffering from dysmenorrhœa, having expressed during a period of insanity, armed with a pistol, goes in the day time to a public building, inquires at the door for a person, whose name she gives, and concerning whom, while in a condition of sanity she expressed anxiety, goes to the door of the room of that person, and sees him, then conceals herself, and as the person passes her, without notice, aims and fires the pistol at him, inflicting a mortal wound, and then cocking her pistol fires at him a second time.

State whether the fact that after the commission of such a homicide, she did not make any attempt to escape, and no effort to palliate the crime or to allege a provocation, but expressed sorrow and great distress, and exhibited great emotion, and the further fact that the party did not avail herself of the first opportunity to commit the act, would, either of themselves, or in connection with the symptoms previously stated, indicate the insanity of the patient, whether, in your opinion, such facts and symptoms could be accounted for upon the supposition that the act proceeded from an insane impulse, than upon the supposition that the party, at the time of the commission of the act, was sane, and was compelled thereto by any other motive, not insanity.

Q. 3. State whether the fact that the person did not avail herself of the first opportunity to commit the act, but after the homicide, attempted to escape, made an effort to palliate the offense, and alleged a provocation; and although expressing great sorrow and evincing great emotion, declared that the person deceased had injured and ruined her, and that she was determined to have revenge, if it cost her life, would by themselves, or in connection with the facts and symptoms previously stated, indicate the insanity of the patient; and whether the act or homicide could be better accounted for upon the supposition that it proceeded from an insane impulse, than upon the supposition that, at the time of committing the act, the person was sane, and was compelled thereto by any other motive?

Mr. Voorhees objected to the witness answering the question. He had a great deal of respect for the witness, and a great regard for his experience as an expert; but before he was a competent witness it should be ascertained whether or not he had made that

branch of study a specialty. It would have been necessary for witness to have heard all of the evidence before he could testify upon abstract cases. This objection was not made from a want of confidence in the ability of the witness, but because there are certain rules which must be obeyed, and which require that a professional man must make a study of the subject upon which he professes to give an opinion.

Mr. CARRINGTON said the opinion of Dr. Nichols was based upon certain hypothetical causes. His testimony is all predicated on certain causes, such as that of a party who had been suffering from disease, etc.; and Dr. Nichols' opinion was founded upon the assumption of two causes, one of which was moral and the other physical, and the prosecution desired to interrogate the witness relative to causes that might result from the physical condition of a party suffering under such causes as were stated in the question.

Mr. WILSON argued that as Dr. Nichols had stated the various causes upon which his opinion was based, and as the questions selected were those pertaining to bodily disease, it was perfectly proper for the witness to say whether, from his observation of similar symptoms in other persons, they were necessarily a cause of insanity.

The witness (Dr. May) was examined by the court, and said he was a practising physician, and had had an experience since 1834. Has had opportunities of judging of the effect of physical diseases upon the mind, but he distinctly desired to say he was not an expert on the subject of mental diseases. He had never made the study of the mind a specialty. He had studied it as much as educated physicians do generally; but whenever he had a case of insanity, persistent in its nature and strongly developed, he did not attend to it himself, but put it under the charge of those who had made the study of the mind a specialty.

Mr. CARRINGTON said he held that any educated physician was a proper witness on a question of insanity.

Mr. VOORHEES argued that before the physician could be a competent witness, it was necessary to show that he possessed that skill required by the books. He argued, further, that the term physician, as used in the books, when applied to cases of insanity, applied only to those who had made the study of the mind a specialty.

The COURT decided that the question was a proper one, and Mr. Bradley took exception to the ruling of the court.

Dr. May said he did not professs to any more skill than a physician in the ordinary routine of practice might require, and had never made the study of the mind a specialty.

Mr. Hughes objected to the form of the first question, and argued that all of the facts as detailed by the witnesses should have been stated, as the witness had not heard the testimony in the case. Whether the deceased wrote the fictitious letters or not, the accused at least believed they were written by him; and her disappointment in love, and her belief that deceased intended to disgrace her, had the same effect as though these facts were actually true, and all the facts as testified to should be stated to the witness. The interrogatory goes to the question of general insanity. This plea had not been set up, but simply that the insanity of the accused was paroxysmal, and that she was subject to mental disturbance, which manifested itself in connection with Burroughs. All the facts in the case must, therefore, be detailed to the witness, and not only a few of them.

Judge Wylie said he did not know what the evidence was in this case. He was not the judge of it, and, officially and judicially, he must close his eyes to it. All he knew was, that they were trying a case of the United States against Mary Harris; and at this state of the case a hypothetical statement was submitted to a witness as an expert, and the witness was asked whether a party thus affected was insane. The court was inclined to admit the evidence, but the prosecution adduced it at their own risk, and it might be subsequently cast aside, and the jury warned not to consider it.

The second question was also objected to by Mr. Hughes, on the ground that it was not a medical question, but one of fact.

Mr. Carrington urged that it was a proper question. Dr Nichols had been asked for his opinion as to the insanity of the prisoner in regard to the whole evidence. He gave that opinion upon the evidence as he understood it; but he (in Mr. C.'s opinion) misapprehended the testimony, and assumed what was not proven. When Dr. Nichols gave his opinion it was on a hypothetical case, the defense relying upon a hypothesis to prove the insanity of the accused. The prosecution undertakes to meet that testimony and opinion, not by showing merely a hypothetical case, but by adopting all the facts upon which the opinion of Dr. Nichols is based. Mr. Carrington argued that the opinion of Dr. May and other educated physicians was worth more than the opinion of those who attended only to disease of the mind; for the former looked to all

physical causes for certain effects, while the latter pursued but one branch.

Mr. Hughes replied to Mr. Carrington, and said this paper seemed to be but a commentary on the testimony of Dr. Nichols, drawn up by counsel, and to which they desired to have Dr. May swear. He defended Dr. Nichols' course, and dwelt at length upon the points of his testimony.

Remarks of Hon. James Hughes.

This speech is a tersely stated argument, without the least attempt at eloquence; yet it is telling, as a contrast to what follows.

Judge Hughes: May it please the court, and you, gentlemen of the jury, it is essential to the discharge of the very responsible duty which devolves upon you in the decision of this cause that you should well understand the issue which you have to try. The indictment charges the defendant with murder; and in this charge is included the lower degree of felonious homicide—manslaughter. Under this indictment, if the evidence is satisfactory of the guilt of the accused beyond a reasonable doubt, you ought to find Miss Harris guilty of murder; or if the proof fall, short of establishing legal malice—that is to say, if the killing, instead of being deliberate and premeditated, was done upon sudden heat—you might convict her of manslaughter. To this indictment, gentlemen, she has pleaded "not guilty;" and this puts the prosecution upon the proof of every material allegation necessary to sustain the charge; and this proof must be so clear that you will be able to say, upon your oaths, that her guilt is established beyond a reasonable doubt. Otherwise you must acquit her.

We propose, or at least I do, to meet this accusation fairly. I have observed, from the wording of one of the instructions asked for by the counsel for the prosecution, a disposition on their part, if they fail in obtaining a conviction for murder, to endeavor to obtain from you a compromise verdict, a conviction for manslaughter.

Gentlemen, this killing was either a deliberate and premeditated murder, or it was no crime at all; it was either excusable homicide, committed in a state of mind which rendered the accused irresponsible for her act, or it was a homicide, although with great provocation, yet with a sufficient degree of deliberation and premeditation to constitute the offense of malice. This, then, is the issue which you have to try; and it is not amiss that I should direct your atten-

tion to the parties to this cause. The accused, as you see, is a woman. It is the pleasure of the prosecuting attorney, in introducing this case to your attention, to comment on this subject. He warned you against sympathy; he warned you even against mercy; and advised you that the laws of the land lodged the prerogative of clemency elsewhere. While he himself professed great sym pathy for woman, he also professed that this particular female was an offender so black with crime that she had excluded herself from the pale of sympathy on that ground. He said that she had manifested a savage disregard of human life; and later in the progress of the cause, when the oaths of the witnesses ought to have dissipated any such impression from his mind, he, with great emphasis, in the presence of the court and yourselves, pronounced this the most atrocious murder on record! It is not, gentlemen, because the defendant is a woman that we expect an acquittal at your hands. She is young, and I was about to say that she is friendless; but she is not; but I will say this in her praise, that whatever friends she has, she owes to her own unassuming merits. She has neither wealth, station, nor kinsfolk; nothing to make her friends except her misfortunes and her good conduct.

It is not because she is a woman; it is not because her parents and relatives, who should be here with her to-day, to sustain her in this trying ordeal, have been separated from her, and have become to her as aliens and strangers, through the acts of the unfortunate man whose life she has taken; it is not for that that we shall ask you to acquit her, but because she is innocent; because she has a right to a verdict of not guilty from you, under the laws of the land. And permit me to say that, whenever, in the very opening of a prosecution like this, counsel, of the learning, experience, and ability of those prosecuting this case, serve notice upon the court and jury, and upon all mankind, that they are seeking for a conviction upon mere technical grounds, and when throughout the progress of the cause the same disposition is manifested by repeated objections to testimony as it is offered, and when, in order to induce the court to give such instructions to the jury as were not law, for the purpose of conviction, old and exploded doctrines are exhumed, resuscitated, and appealed to, and when we see immediately behind the prosecution the party representing private vengeance in this cause, the prosecution so introduced seldom, if ever, fails to be unsupported by law and by evidence.

Gentlemen, the defendant is brought here by the power of the Government, to answer this charge. Human life has been taken, and a public examination of the circumstances attending it is due

to public justice; it is proper that she should be here and answer for the killing of this man; but she comes here helpless, in the hands of a powerful Government; and the Government is the other party to this cause. True, the duty of the Government is to enforce the law; to punish offenders; to protect human life; but in no spirit of persecution and with no vindictiveness. It is a painful thing, and it ought to be so to the officer of public justice, to arraign, try, and execute even the guilty. Zeal, perhaps overmuch, and passion may be excused in the prisoner, or in her advocate when arraigned before the bar of public justice, and charged with the highest crime known to the laws, but the representative of the commonwealth comes here uninfluenced by private considerations. He is presumed to be disinterested, presumed to be impartial, and absolutely to desire, as the law desires, that no innocent person should suffer; and to desire to prosecute his cause in the spirit of the law, which says that it is better that ninety-nine guilty persons should escape than that one innocent person should suffer.

* * * * * * *

Now, the fact about it is, that there is a letter in the testimony which shows that these parties had a lovers' quarrel and exchanged tokens, or agreed to do so; but, as the evidence shows, afterwards had an interview, became reconciled, and their affairs floated on in as smooth a current as before. If this be not so, why are these old letters here? why is this picture here? If the agreement to break off this engagement was carried out, if they never came to a different understanding than that, why are these things here? Truly, the man must be blind, I think, who fails to understand that matter, or surely he never was in love; never had any quarrels, those lovers' quarrels which are said to be sweet, and those reconciliations that loom up in after-years as the green spots of memory. He denies here that the engagement to marry subsisted after the writing of this letter, and asserts that the lady herself broke it off, and that she was then mistress of her affections and remained so, that afterwards, when the disconsolate and rejected swain married another woman, she became jealous and killed him for it! That is his theory. The mere statement of such a theory is a sufficient refutation, and shows to what straits the prosecution have been driven. How hard it is for them to meet fairly the law and the evidence in this case, and to get up even a plausible theory of guilt against this poor unfortunate girl.

Then he speaks of punishment, pursuing the same cry for blood that has characterized this prosecution from the commencement.

Punishment is good for the guilty, but when administered by courts of law it is administered in a spirit of sorrow and for reformation, not with vindictiveness. Punishment, indeed! Who is to punish the betrayer of female honor? Who is to punish the serpent that, with his slimy track, pursues from early girlhood into budding womanhood the unfortunate girl, separates her from her friends, her family, and leaves her alone and isolated, without father or brother to defend or protect her, and then throws her heartlessly upon the world? Who is to punish him?

Ah! this unfortunate man, no doubt, thought that he could do this thing with impunity, because this girl was friendless. There is a just God, however, who administers justice in such cases, and he chose as the instrument of his justice, in this particular case, the poor unfortunate girl whose life had been forever blighted. That little girl (pointing to the prisoner), with that little hand poised the pistol which might, upon ordinary occasions, have been discharged a hundred times, or rather snapped (for they will not discharge one time in fifty), without any serious consequence, but with that toy of a pistol she was the instrument of punishment in the hands of God, and He took away her reason, and she stands here to-day secure from human justice. That overruling Providence, without whose consent not even a sparrow falls, brought punishment to the door of the deceased—brought it by the hand of her that he had ruined, and placed her in a position where she shall answer to Him alone for what she has done, and not to human laws.

Something has been said by the gentleman who has just taken his seat, about attacks—attacks which have been made upon the deceased. Gentlemen of the jury, one of the most painful duties that ever devolves upon counsel, in the necessary defense of an accused person, is to throw censure upon those who are dead—to bring up their faults, their crimes, and perhaps their wickedness—but when it is necessary to the defense, to the true history of a transaction, how can it be avoided? Could we give you a true history of the causes of this sad tragedy without tracing the past relations between these parties? Could we stand here and do justice to our client, and draw the veil over the transactions of that man's past? I submit it to you, gentlemen, if we could have done so, so far as I was concerned, I would gladly have done it, and I feel assured that I speak the sentiments of my associate counsel. What attack, or what denunciation have you heard of that dead man, from one of us, with the exception, perhaps, of a single expression, that was brought out by one of the counsel, by a most unwar-

ranted attack upon our client from the prosecution? Attack him? The gentleman ought to know that all attacks upon human conduct are harmless, except when the weapons are furnished from the magazine of a man's own life. A man who leads a pure life, who deals fairly and honestly with his fellows, may be persecuted, may be hunted down, calumniated, but his character will only shine brighter for all that, if it can stand the test; and we know that so well that we would feel assured that an unwarranted attack upon this man by us would only recoil upon us, and do our cause an injury. But attacks are fatal where the conduct of the party himself has furnished the weapons with which to make them; and we submit it to you, gentlemen, whether, in this case, the unfortunate deceased has not furnished everything necessary, notwithstanding the boast of the prosecution, in his opening speech, that he died without a stain? What have we heard of his dying declarations? Why did not they tell you what he said, if he said anything? It is a singular fact that the prosecution has introduced no testimony as to that. I do not say there were any dying declarations, but there might have been, and there might not have been. He lived, you will remember, fifteen minutes.

Attacked! Yes, he has been attacked, but not by counsel. Who, then, you may unthinkingly ask, attacked him? The sworn evidence in the cause attacks him. His own letters attack him. His inhuman cruelty, in seeking to destroy the reputation of this poor girl, when he had resolved to desert her, attack him. His anonymous letters attack him. His assumption of the relation of husband for a most worthy and estimable lady, under the solemn sacraments of religion, occupying the position that he did to the accused in this case, attack him; and one who had sought to sustain him in his wrongs, and one who has been the partner of his cruelty, and I might also say the partner of his guilt, toward this young woman—even his own brother—attacks him.

Gentlemen, you have more evidence before you to show you that the Rev. John C. Burroughs is the responsible cause of his brother's death than you have to show that this unfortunate girl was.

And then, again, they say we have attacked the Rev. John C. Burroughs! When did we attack him? Oh! somebody looked; Mr. Bradley's eye flashed in honest indignation at the halting manner of some of the prevarications of the witness. Guilty people are very sensitive about these things. I do not know that we have as yet attacked Dr. Burroughs' testimony, and I would not go one step to the right or to the left to attack it, if it were not my duty; but I know that I mean to attack it; and if I failed to do so, I

would be recreant to the duty that I owe to my client in this case. What! a doctor of divinity, who has come here and contradicted the statement of every witness in regard to the material points in this case! who has testified that his brother was not in Chicago upon a certain day, and therefore it was impossible for him to be at a certain place; who, knowing that this prostitute, Ellen Mills, knew the fact, and could either sustain or overthrow him, for he himself tells you that when a detective or a policeman told him that, with one or two hundred dollars he could get her out of the way, he made use of no expression of disapprobation—not to be attacked?

A reverend gentleman, seeking simply for justice and for truth, to thus make himself a silent party to the running off of a most material witness for the defense, and then come here and attempt to swear away the facts upon which that defense was based! Attack him! Yes, we will attack him; and the justice of God, that took away his brother's life, will, in my humble opinion, bring to him his share of the punishment; for to him, a clergyman, reputation and credit are everything. If this trial does not condemn him with his congregation, and with all good Christian people in this land, then commend me to the standard of public sentiment in Chicago.

Now, gentlemen, we meet the issue fairly. The killing is admitted. The court has laid down the law that we must assume the burden of proof as to the insanity. We accept it. The court has stated the degreee of certainty with which we must establish it. I reply that we accept it. We will try to meet the issue. "Oh! how I loved him," is the words of this tender girl.

If this young lady could go through all this, could bear all this, and yet endure the sight of him and control of her reason, of her conduct, she has a heart and a soul most obdurate. The mere statement of the case, gentlemen, is enough. Now, upon that evidence, all of which he heard, and upon the facts that came within his own knowledge, Dr. Nichols, an eminent physician, having charge of an insane asylum, possessed of great experience in this particular branch of science, has stated to you, repeatedly and distinctly, his sworn opinion, that the killing of Mr. Burroughs was the result of an insane impulse. Do you object to that testimony, gentlemen? Are you so hungry for conviction in this case—do you participate so much in the feelings that have actuated the prosecution—that with the sworn testimony of this eminent physician, supported by that of every other doctor testifying in the cause, you can say that you require any further proof to satisfy you beyond a reasonable

doubt, since such is the requirement of the law, that this girl was insane, in the sense we claim? We do not claim that she was generally insane, as the prosecution insist upon having you believe. Have we not repeatedly stated that we did not claim she was even partially insane all the time; but that simply she was subject to sudden attacks, overwhelming paroxysms of insane impulses? The testimony of the doctor met the question fairly and fully, but the argument of the prosecuting counsel did not meet it all. He had nothing to say about the testimony of Dr. Nichols.

I read from Ray's Medical Jurisprudence, page 66, section 45:

"It is not enough that the standing of the medical witness is deservedly high in his profession, unless it is founded on extraordinary knowledge and skill relative to the particular disease, insanity. Lunatic asylums have so multiplied in our country, that patients of this class are almost entirely taken away from the management of the private physician, and confided to the more skillful conductors of these institutions; so that many a medical man may spend a life of full practice without having been intrusted with the care of a dozen insane persons. To such, therefore, a practical knowledge of the disease is out of the question; and thus the principal inducement is wanting to become acquainted with the labors of those who have enjoyed better opportunities. If a particular class of men only are thought capable of managing the treatment of the insane, it would seem to follow, as a matter of course, that such only are capable of giving opinions in judicial proceedings relative to insanity. True, in important cases, the testimony of one or more of this class is generally given; but it may be contradicted by that of others utterly destitute of any knowledge of the subject on which they tender their opinions with arrogant confidence, and the jury is seldom a proper tribunal for distinguishing the true from the false, and fixing on each its right value. An enlightened and conscientious jury, when required to decide in a case of doubtful insanity, which is to determine the weal or woe of a fellow being, fully alive to the delicacy and responsibility of their situation, and of their own incompetence unaided by the counsels of others, will be satisfied with nothing less than the opinions of those who have possessed unusual opportunities for studying the character and conduct of the insane, and have the qualities of mind necessary to enable them to profit by their observations. If they are obliged to decide on professional subjects, it would seem but just, and the dictate of common sense, that they should have the benefit of the best professional advice. This, however, they do not always have; and, con-

sequently, the ends of justice are too often defeated by the high-sounding assumptions of ignorance and vanity."

Just such testimony, then, as the law requires, we have given you, and it was no doubtful, no hesitating opinion that this learned and experienced physician gave you; and his manner was such as must have recommended his testimony to every impartial mind. We took the risk of that, and put the question to him, not contenting ourselves with proving acts of insanity before, and acts of insanity afterwards, but we marched right up directly to the issue and put the question to him as to the precise moment of time when the homicide was committed. He said that act was the result of an insane impulse. Do you believe it? If you do, gentlemen, you must acquit this prisoner.

My brother hoped "a Washington jury would maintain their dignity." Do you think it would be maintained by convicting an insane woman, because there is too much licentiousness in the town generally? What kind of an appeal to a jury is that? Way out in the far West, in the trial of little suits before a justice of the peace, I have heard appeals made to excite prejudices against a town of people; but I admit I was not prepared to hear such an appeal at the capital of the nation. A city of licentiousness! If that be so, and a reformation is to begin, wait until you have before you some man of power and influence, and you will not have long to wait. The signs of the times indicate that. Wait until some unprincipled official, who has taken advantage of the disjointed state of the times to trample upon human liberty, upon human rights, and to disregard statutes, constitutions, and every sanction of liberty—wait until such men are dragged here, and then vindicate the law in Washington. In the meantime, let this poor, blighted, afflicted, ruined and persecuted girl go free. The law has no claim upon her. Let your verdict follow the partner of the deceased in this plot; and let Washington justice travel to Chicago, and unmask there, before a confiding and trusting congregation and people, a man who wears the livery of Heaven to serve the devil under.

Gentlemen, I am now through with this cause, and knowing, as I do, that I shall be followed by a gentleman, who will far more than supply anything I may have omitted, so far as I am concerned, I commit the case into your hands, with the most perfect and implicit confidence, that it will not take you long when you get this case fairly into you hands to record a verdict of Not Guilty.

Remarks of Hon. D. W. Voorhees.

Mr. Voorhees said: It is not necessary for me to attempt to increase your sense of the solemnity of the issue which is placed in your hands. Nor need I dwell upon the fact that this is one of the most remarkable cases ever submitted to a jury for trial. In many of its aspects it wears features more startling and extraordinary than we have hitherto met with in the annals of jurisprudence. There is no man in this court room, no one throughout this broad land, whatever his experience or profession may be, who has ever seen its like in all respects before.

A few months ago, in open day, in one of the public buildings of this capital, and in the presence of numerous observers, a human being was shot down by the frail hand of the prisoner at the bar, and sent to his final, dread account. The homicide mentioned in the indictment was thus committed; and if it was deliberate, rational murder, then the blood of innocence is crying unappeased from the ground. But what are the elements which constitute this baleful crime? From that hour presaging woe to the human race, when the first man born of woman became a murderer, down to the present time, we have on record the frightful characteristics of the murderer. He is a being in whose heart the fires of malice and hate glow in perpetual flames, in whose face the image of God is blotted out, in whose eyes the light of mercy and love is forever quenched, who lies in wait like the tiger for his prey, and who strikes his unsuspecting and unoffending victim from motives of revenge or the lust of gain. Around such a being there centers every conception of horror which the human mind can embrace. All nature, animate and inanimate, the very earth and sky, recoil from him who bears the primal curse, and there is no communion for his blackened spirit this side of the abodes of the lost.

But turn from this faint picture of a real murderer to the delicate, gentle being before you. We are told that deliberate and atrocious murder has been committed and that the criminal is in court. We are told that a brutal assassination has been accomplished, and that the lurking and ferocious assassin is in our pres ence. Where, gentlemen, where? Am I to be told that this heart-broken young girl, with her innocent, appealing face, and look of supplicating dependence on you, is the fierce and malignant monster of guilt which is described in the indictment and in the inflammatory language of the prosecution? Am I to be told that her heart conceived and her hand executed that crime for which the Almighty marked the brow of Cain?

Let us pause and reason together for a few moments on a primary question in this case. The life of this defendant, from the days of her early and happy childhood to the present hour, has been investigated and laid open before you. Every trait of her character, all the general incidents of her conduct since she was ten years old, have been elucidated and detailed in your hearing. Of what vice has she ever been guilty? In what immorality has she ever indulged? Not one, at no time and under no circumstances. Her life has been amiable, kind, affectionate, blameless, and pure. Troops of friends, of the best and most irreproachable in the land, have gathered about her in her quiet sphere at every stage of her checkered existence. These files of depositions declaring all her ways for nearly ten years past attest these facts. Then, at the very threshold of this case, you are to answer this question: Can a young and generous mind, wholly uncontaminated with vice, unsullied and unstained by contact with the evil practices of life, without previous training even in the contemplation of crime, at once, while in a healthy state, in the undisturbed enjoyment of all its faculties, incur that awful grade of guilt at which civilized human nature in all ages stands aghast? Is it within your experience that the soil of virtue bears spontaneously the hideous fruits of vice? Are there no gradations in human character and conduct? Where is the hardened criminal who ever ascended the gibbet in expiation of his offenses who has not marked his downfall from small beginnings, increasing gradually and swelling in volume until he was hurled onward to the commission of gigantic crimes for which the law claimed his life as forfeit? And yet you are called on to believe that this defendant, at one single bound, sprang from the paths of virtue, gentleness and purity, without any intervening preparation, to the highest and most revolting grade of guilt and ferocity known to human society. Those who have predetermined her guilt and passed a verdict in advance of the evidence and the law, may indulge in this absurd and repulsive philosophy. They may cherish this libel on human nature. And, in doing so, they may as well go further. Let the school-houses be torn down and the churches abandoned. The instruction and moral culture of youth are useless and in vain. The precepts of morality and the principles of religion afford no security to the minds of their possessors from the sudden, instantaneous development of the most appalling wickedness.

In the name of reason and universal experience I utterly repudiate this shocking theory, which the prosecution is forced to embrace before it can proceed a single step against the life of this girl. In

the name of undefiled and virtuous human nature I repel it. In the name of innocent childhood and unstained womanhood, in the name of your own dear ones at home, I pronounce it a slander upon those holy attributes of the human heart which tend upwards, and ally us with heaven. I deny that Mary Harris is a criminal. I deny that any murder has been committed. I deny that this young prisoner is responsible for the death of A. J. Burroughs. I assert that his death was not a crime. He was not slain in violation of law, for offenses against the law can only come by those who possess a sound mind and an unimpaired intelligence. And now, invoking your attention, I shall proceed to show you from the story of her life, which must constitute her defense, that it is not your duty to lay your hands in further punishment on the suffering head of Mary Harris, but that it will rather be your pleasing task to open her prison doors and bid her go free, attended by the charitable blessings of all Christian people.

Who is this unfortunate defendant, and whence came she, when her weary feet bore her still more weary heart to this crowded capital? A short time since, and but few here could have answered; but now all is known. We see at a single glance a gliding, panoramic view of the life of an earnest, devoted girl. Our eyes first rest upon a point nearly ten years ago. At this time Mary Harris was a beautiful and happy child, some ten years of age, in the town of Burlington, Iowa. In that hour of tender childhood the evidence shows that Burroughs first met her; and would to God that in that hour she had died! Gentle memories would have clustered around her peaceful grave, and this bitter cup, whose very dregs she is now drinking, would have been spared her. There is a mercy at times in death, for which the stricken soul longs and gasps as the parched and feverish earth does for the cooling rain. But He who notes the sparrow fall, and has a design in all the ways of men, ordered it otherwise; and she is here to-day weary and heavily laden, but humbly submitting to the Providence by which her own will has been overruled and her actions guided.

Burroughs at this time, gentlemen, was a man of comparatively mature age, more than twice her senior—as he afterwards in his letters declares—almost old enough to be her father. She sat upon his knee in the purity of unconscious childhood. I speak now from the evidence furnished by his own letters of a later period, and also from the testimony of those who witnessed at that time their constant intercourse. He proposed to mold and fashion her mind by the superior force of his own age, experience, and will, in order that she might, at a future period, make him a suitable wife.

There is no room to doubt upon this point. Let those ninety-two letters here produced in court make their appeal. They speak in no uncertain tone. They show us robust, developed manhood seeking the ascendancy over a confiding child. They show us maturity and strength striving for the mastery over inexperience and weakness. He assumes even a paternal interest, and teaches her young heart literally to leave father and mother and cleave unto him. We hear it stated that no marriage engagement ever existed between them. The miserable desire to inflict indiscriminate punishment upon the innocent as well as the guilty would even deny this plain fact, which is established by almost every line of the evidence to which you have listened. The prosecution itself proved that at one time the very day was fixed for the fulfillment of their oft-repeated vows.

Under these circumstances, need I dwell at length upon the imperious nature of the influence which he obtained over her? The child became absorbed in the man. What else could happen? They walked the pathway of life hand in hand for many long years of hope and fond anticipation. He taught her to regard him as her future destiny. He was all the world to her. Her heart opened and expanded under the influence of his smile as the bud becomes a flower beneath the rays of the sun. She grew up to womanhood in unquestioning obedience to his will. The ties by which she was bound to him were the growth of years, and embraced all the strength of her whole being. And did all this have no effect on the subsequent condition of her mind when disaster came? He had carried her to the highest pinnacle of happiness and hope. She stood upon the summit of joyous expectations, and all around her was sunshine and gladness. Well might she exclaim to my learned and eminent brother, as she paced her prison floor, "Oh! Mr. Bradley, you should have seen me then; I was so happy!" Yes; though poor and humble, yet she loved and was beloved, and it was enough; she was content. For in that hour, when a virtuous woman feels for the first time that she possesses the object of her devotion, there comes to her a season of bliss which brightens all the earth before her. The mother watching her sleeping babe has an exclusive joy beyond the comprehension of all hearts but her own. The wife who is graced by her husband's love is more beautifully arrayed than the lilies, and envies not the diadems of queens. But to the young virgin heart, more than all, when the kindling inspiration of its first and sacred love is accompanied by a knowledge that for it in return there burns a holy flame, there comes an ecstacy of the soul, a rapturous

exaltation, more divine than will ever again be tasted this side of the bright waters and perennial fountains of paradise. The stars grow brighter, the earth more beautiful, and the world for her is filled with a delicious melody. This, peculiarly, is woman's sphere of happiness. There she concentrates all the wealth, the unsearchable riches of her heart, and stakes them all upon the single hazard. If she loses, all is lost; and night and thick darkness settle down upon her pathway. It is not so with man. His theatre is broader. No single passion can so powerfully absorb him. A variety of interests appeal to him at every step. If disappointment overtakes him, a wide and open horizon invites him to new enterprises, which will relieve him of that still, deep, brooding intensity which is the pregnant parent of woe, insanity, and death to woman.

I am speaking now of general principles; but every word that I have said is applicable to the case of Mary Harris. For when her parents, distrusting Burroughs, and fearing that very treachery which afterwards blasted her life as well as his own, endeavored to break off the connection and wed her to another, who, from their previous history, could for a moment doubt the result? He went to Chicago, and advised her to do the same in order to be near him. Gentlemen, the language which faithful woman holds to the object of her love when the hour of separation is threatened is very old and very beautiful:

"Entreat me not to leave thee, or to return from following after thee; for whither thou goest I will go, where thou lodgest I will lodge:

"Thy people shall be my people, thy God my God; where thou diest there I will be buried:

"May the Lord do so to me and more also if aught but death part thee and me."

It was in this spirit and under these circumstances that she came to Chicago and resided with the Misses Jane and Louisa Devlin. It was Burroughs still shaping her destiny. It was the man still pointing the course for the child to follow. And shall this be imputed to her as a fault? Will this prosecution, fed, as I believe it to be, from the springs of private malice, assail her because she trusted Burroughs and confided in his honor? Had Burroughs been faithful to his vows, as he was called on to be, by every attribute which ennobles manhood, by every law, human and divine, then this unhappy girl would have been to-day his respected wife, and the world would have applauded her sublime devotion to him when the truth between them was sought to be poisoned by whispering tongues. Now, because he was false and broke her heart,

you are called upon to believe that this act abased her virtuous brow into the dust of shame. I repel this calumny. Not only do I pronounce it a slander upon Mary Harris, but it is equally a slander upon the truth, fidelity, and virtue of womanhood. She did no more than what the proudest, the purest, and the best have done in all countries and at all times. She endowed him upon whose arm she leaned with the principles of justice and honor; she crowned his brow with a constellation of all the virtues and then trusted him. She turned her back on home, kindred, and friends, and with him faced the world alone.

We are told that no stain shall rest upon the name of the deceased. The leading counsel for the Government, at the very opening of this trial, announced, with singular emphasis, as if anticipating your conclusion, that he was a Christian who had lived and died without blemish or reproach to that sacred character. His brother, the Rev. John C. Burroughs, says that his object here is to relieve his name from the slightest opprobrium. Thus we see the purpose of this unnatural struggle for a conviction, in the face of law and evidence, which for more than two hundred years have prevailed in the defense of the children of misfortune and providential affliction. Mary Harris is to be condemned, to be carried to the horrid gibbet, that appalling machinery of death, terror, and lasting ignominy, in order that the conduct of A. J. Burroughs shall stand triumphantly vindicated! I do not wish to assail the dead; but is it expected that this monstrous assumption in favor of crime shall be passed in silence? Shall this trial impress upon the public mind, as a lesson for future action, that it is a part of the Christian character to win the love and confidence of a child, to cultivate her affections as years advance, engage to become her husband, induce her to leave her home in order to enjoy his society, and to escape from another proposal of marriage; and then, after seven years of hope deferred, to dispel all her bright dreams of life by quitting her in a moment, by dropping all connection with her without a word of explanation, by marrying another woman and turning his back on her forever?

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Time passed on with this defendant, bearing her onward to a region of horrors, to the scene of her dismay and ruin; and I must move along on the melancholy tide, and approach the sorrowful hour. We have now traced these parties for years. Burroughs had carried her hopes to the highest elevation. She was looking forward to a future filled with honor and with delight. It was of his creation and there was not a cloud within the scope of her vision.

In such a serene and happy moment as this, with no note of preparation to her tender and susceptible mind, with no sign of warning, the blow descended upon her naked head, shivering every hope with which her heart was tenanted, and dashing the temple of reason itself into ruins. Is this statement the work of fancy on my part? Is it not the sad, literal truth? I appeal to you who have heard the evidence. Counsel have seen fit to attribute powers of eloquence to me, which I neither possess nor affect. I can only repeat to you a plain and simple story of wrong, misery and madness which you already know, and which is far more eloquent in itself than any words I can employ. Seven years of love were spurned in an instant. Seven years of patient hope were turned in a moment to despair. He had lifted her up almost to celestial heights, only that her fall might be sufficiently great to dash her to pieces. Though without sin, yet she was cast out from her place of blissful abode and fell like the sun of the morning to hope no more forever. In order to understand the effect of disappointment and misfortune, we must fully consider the condition of the mind when the shock came. Adopting this rule in the present instance, and we shudder at the bare contemplation of the mental agony of the defendant when she realized that she was abandoned by him for whom she had abandoned all but her honor.

Gentlemen of the jury, this Christian minister by profession, swears positively that his brother did not write these letters. But does he not stand before this court, before this jury, before the world, and before God, convicted, upon his own testimony, of suppressing the very evidence which would have settled that question forever? There is but one conclusion to be drawn from this fact. These two absent witnesses would have sustained Louisa Devlin; and Dr. Burroughs and this prosecution knew it. They would have described the deceased here in this court as they did in Chicago. This is no forced assumption of mine. It is a well-settled conclusion of law. The suppression of evidence is a grave and almost conclusive presumption against the party that resorts to it. This is more especially true when, as in this case, the prosecution is sustained by the treasury of the Government in enforcing the attendance of witnesses. What is the object of a trial in a court of justice? We are here in search of truth. We have, each one of us, under the solemnities of an oath, invoked the name and help of God in the discharge of that duty. We stand on holy ground. Life, life, that mysterious gift of the Creator, is the issue at stake. Its awful import should inspire every breast with a religious desire to aid this court and jury in arriving, if possible, at the exact truth.

Then, what shall be said of one who admits he has done so? I learn that it is said that no attack can injure Dr. Burroughs; that his position is so exalted that no shaft can reach him. I have no desire to indulge in personal assaults; but no position in life, no assumption of superior piety and virtue, will ever shield the character of a witness who, in a trial involving life itself, conceals material evidence, and then attempts to supply its place by his own unsupported oath. Nor need counsel, in such an instance, waste their time in denunciation, for no language which our tongue could utter could paint his conduct in colors so dark, in a moral deformity so hideous, as he himself has painted it by his own testimony. Such a witness becomes at once powerless for evil before an intelligent jury. He is dead by his own act.

It will be asked, however, what motive Burroughs had to thus compass the destruction of one whose image, if he was human, must have been blended with his tenderest memories, with the most sacred associations of his heart. A refuge will be sought in this inquiry, from the irresistible pressure of the proof which thus far shatters all the assumptions and theories of the prosecution. Why—why did he do this deed without a name for cruelty and perfidy? You will be told that all the actions of sane people have their intelligent reasons. This is true; and the history of this case gives a ready, an instant answer to this inquiry. His motive was not the gratification of passion. Lust was not one of the elements in his calculations. Base and wretched as are such motives of action, yet, if it be possible, those that actuated Burroughs were still lower and more depraved. Look calmly at his situation. From Mary Harris he was about turning away without a word. He knew that such an act would be to her as appalling as the voice of doom His conscience made him a coward. He could not face her with the story of his stupendous crime. He could not look into her confiding eye and tell her that his whole life towards her had been one mighty falsehood. Human nature, however depraved, was not equal to such a task. The past was filled with voices of reproach and terror to his guilty heart. The future frowned on him full of menace and warning. The present was haunted by a sense of conscious wrong from which he tried in vain to escape. He knew, too, that he was in her power. These letters which are here in court, and many others not here, arose in his memory. He recalled that one in which he says: "And Mollie, if from any reason whatever I may change my views or feelings towards you, and I should feel like entering into a matrimonial alliance with any one else than yourself, I will promptly advise you of it." He was about taking

that fatal step, but he had not the manly honor to fulfill his promise. He, however, like one who plans the commission of a crime, took measures for his escape. He was to be married in a few days to the unhappy lady who now mourns in her widowed home, and whose melancholy fate I deeply commiserate; and he knew that, when that fact reached the ears of Mary Harris, her cries, her sobs, her voice of wailing would ascend like perpetual lamentations in the air. She might, in her deep distress, utter his name to the world in such a way as to stain his character as a Christian. She might come near him some day, and remind him that he once took a child from her parents' roof, and broke her heart. Aye, it was in her power to denounce him as false and infamous at all time and places, to pursue him, if she desired, as an avenging shadow, to rob him of peace, and to turn his days and nights into fear and alarm. But if her foot once crossed the threshold of shame she was in the fowler's snare and at his mercy.

This evidence can have but one purpose. It aims at the life of the prisoner. It in no wise touches the character of the deceased. It is a bold demand upon the part of Dr. Burroughs for blood. It is the key which unlocks and reveals the meaning of his presence, and of all his evidence in this case. O! spirit of eternal justice, what more is this poor, shivering victim of man's cruel perfidy to suffer! Is it not enough that one drove her mad, and caused her to cry out—

> "I am bound
> Upon a wheel of fire, that mine own tears
> Do scald like molten lead?"

And must the brother come now, and struggle to drag this wan, emaciated and stricken being to an awful and ignominious death? Is he not satisfied with the ruin already wrought? Are you not ready to exclaim, "Spare her, Dr. Burroughs; oh! spare her. Spare her for the sake of the name you bear. Enough she has suffered in that name. For the love of God and for the sake of His mercies spare her broken life. Do not press and trample on the fallen and undone. She may meet you no more in this world. You may forget her mortal agonies in the honeyed commendations of your followers. But there comes a day when the one who murdered her peace, and the one who now seeks to murder her life, will both meet their victim in the presence of the Great Judge, and in a court above the sun, where misfortune is not a crime, and where earthly distinctions fade away; where the poor are rich, and the merciful blessed; where the feeble are strong, and the oppressor's rod is broken; and in that awful presence they will be called to

answer why, at their hands, Mary Harris was beaten and scourged to madness and death. Spare her; oh! spare her! lest, if you succeed in your purpose to slay her here, she will confront you in the eternal world as a bright angel, with her fair hair dabbled in her own innocent blood, shed by your hand, and there shriek into your shrinking ear, 'False, fleeting, and perjured!'"

Alas! how often the great rules of right—eternal and unchangeable right—are perverted in man's administration of justice! How often the accused should be the accuser! How often the unoffending sufferer bears the punishment due alone to others! What a scene is this in which we are all engaged! Here, before you, sits one of the feeblest and saddest beings ever born of woman—a mere helpless atom, buffeted and driven here by angry and malignant winds. The babe in its mother's arms was never more unconscious of the evil purposes of crime, than the heart of this pale and wasted prisoner. Yet the freezing terrors of the law surround her on all sides; the judge upon the bench, with wise and patient calmness elucidating its principles; this jury, listening to the story of her blighted life, and solemnly weighing the evidence; this crowded and anxious audience watching the result; and men, bearded men, earnestly discussing the issue, whether she may live or die! And why all this? Because, as she said to you [turning to Mr. Bradley], "I have been beaten and scourged without cause." Yes; bruised, maimed and mangled, until the divine gift of human reason gave way, utterly powerless, with less than the instinct of the poorest worm, that resents in blindness the heel that tramples it to dust. And yet this is the being against whom we are to listen to a hue and cry as if she were a monster, a Borgia, or a Hecuba!

Gentlemen, I sometimes tire of life when I see wrong and injustice spreading their prosperous branches as the green and flourishing palm; when those by whom offenses come in this world, who prey upon virtue and turn it into vice, who sport with innocence in order to poison it, who make a mockery of love and a plaything of truth, go not only unscathed of the law, but even applauded by the hired panderers to a depraved and debauched public sentiment. Whatever of philosophy I have takes a painful and gloomy form, and I feel that I could say with the great dramatist:

> "Out, brief candle,
> Life's but a walking shadow; a poor player
> That struts and frets his hour upon the stage,
> And then is heard no more; a tale told by an idiot,
> Full of sound and fury, signifying nothing."

We behold, for once, at least, in our lives, a human being totally transformed. The change is complete in every respect. Physically, she is no longer the same. Her former buoyant health withers away. The bloom of her face dies out, as it were, in a single night. Her already slight frame becomes still slighter. Sleep, the gentle nurse in whose arms the peaceful invalid wooes the returning spirit of health, fled from her eyes. Burroughs had murdered sleep; and her mind was fixed with an appalling intensity on the memory of the past, which was to her brain as a consuming fire. From this horrible spell there was no escape.

No; and hence we see her mind developing its changes in equal pace with her body. It is the seat of the canker, which blighted her whole system, and which no medicinal balm can reach. There was lodged that perilous stuff which no drug can purge from the distracted breast. According to the evidence, she was up to that period the merriest and the most joyous of her circle. The world, the glad earth, the opening day, the bending sky, and the kind faces of friends, were all beautiful to her, and she enjoyed the few years of her unclouded happiness. But now the laugh was gone; no merriment kindled in her eye; the future to her was dead; she lived in the past and it was the charnel-house of all her hopes, and over it hung the mourning cypress. I am reading her condition to you by the light of the evidence alone. I am showing you that effects were following causes. She grew weary of life. Who does not, when all that gives life its value has perished? This is, in itself, one of the incipient stages of insanity. It is the offspring of that "Black Melancholy" which all authors designate as one of the parent springs of madness. And when this defendant rose that morning from her bed, and murmured her farewell to the friend, whom she supposed to be asleep, had she succeeded in taking her "walk by the lake shore," in the darkness before daybreak, she never would have been here on trial. The winds and waves would have sung her requiem. There might have been an inquest, and the usual verdict.

[Counsel cited many authorities and read from experts' testimony at considerable length, and concluded]:

Here, then, is the whole defense established by the highest evidence known to the law. The opinion of an expert is a fact in the case. No other witness can give any opinion at all. Dr. Nichols, therefore, proves as a fact that, from moral and physical causes combined, the defendant has labored under paroxysmal insanity,

and that the act for which she is now on trial was committed during a paroxysm, and under an insane impulse. You have no legal right to find a verdict contrary to the testimony of Dr. Nichols, unless he is unworthy of belief, or has been successfully contradicted by other competent witnesses, whose opinions are entitled to greater weight than you attach to his. On this proposition I rest securely. And on the uncontradicted statement of this scientific witness, I risk the life of the prisoner. He is the Saint Peter of my faith, and on this rock I build the defense; and neither the power of the public prosecution nor the gates of private malice shall prevail against it.

But we are met at this point with a proposition by the prosecution which I undertake to say is without a parallel in the courts of any country which has been blessed with the light of civilization. Utterly borne down and crushed by the evidence of Dr. Nichols, the gentlemen who represent the Government boldly and without a blush declare that the opinions of men who, like him, have given their lives to the study of the mind in all its various and mysterious phases, are less reliable in the discovery of insanity than the opinions of those who have bestowed no particular attention on this great and difficult subject. The cry of "mad doctors" has been raised, and we heard an appeal against them in favor of what were styled "common sense doctors." Gentlemen, I feel humiliated that I have listened to such language from such a source. Is there such an unappeasable rage to take the poor life of this prisoner that, in order to do it, these distinguished gentlemen are willing to resort to the lowest and most pernicious arts of the profession? Do they propose to deride the disciples of learning, the devotees of science? Will they stand up here in the noonday of human progress and enter the lists as the avowed champions of ignorance? Who are the "mad doctors" of the world at whom this persistent and systematic sneer is levelled? They are those who have made the subject of insanity a specialty, who have given their days and nights to incessant and laborious thought, who have struggled with painful toil to alleviate the direst woes of their fellow men, to cure those wounds which the lash of misfortune inflicts, and to pluck from the diseased mind its rooted sorrows. And is it found necessary to stamp such characters with odium in order to convict Mary Harris? Shall we pluck from the scientific heavens their brightest and boldest luminaries, and accept darkness, gloom, and mist again? Shall we strike down that blazing galaxy of genius, toil, and progress, where the names of Winslow, Esquirol, Ray, Gall, Spurzheim, Rush, Combe, Prichard, Ellis, Hoffbauer,

with others of the shining host, are burning as stars on the front of the sky; and into whose glorious companionship we anticipate but a few years by introducing now the name of Dr. Nichols himself? These are they against whom the prosecutors invoke the aid of ignorance and prejudice. They have certainly mistaken the age in which they live. The district attorney is nearly two centuries in the rear of the still advancing column of human improvement. There was a period in the world's history when this assault on men of science would have relaxed the dull features of stupidity into a smile and caused blind superstition to nod its ugly head with approval. There was a time when darkness rested upon the face of the waters in the scientific world, when the voice of learning had not yet brought order out of chaos, when courts of justice were nurseries of bigotry, when mental derangement was judicially interpreted as the possession of a demon, and the sufferer declared to be in familiar communion with the Prince of Evil.

We hear much said in regard to the defense of insanity. Many speak of it as a plea manufactured by counsel. It is, however, in one vital respect, like all others—it must be supported by proof or it falls to the ground. Have we manufactured the positive and direct testimony of every medical witness introduced on both sides? Is this our handiwork? I submit to you and to the candid judgment of the country, that if Mary Harris can be convicted under this evidence, if Dr. Nichols can be broken down in this court, not by contradiction, but by declamatory appeals to prejudice, and if finally, the unbroken chain of scientific testimony can be put aside as naught, then the great and settled principles of medical jurisprudence are a delusion and a snare, and the infirmities of the intellect, occasioned by misfortune, constitute no defense for violent and irrational conduct.

And why, without one solitary witness to support their theory of the case, do the prosecutors so hunger and thirst for the conviction of this most desolate and bereaved of sorrowing mortals? Why do they clamor so fiercely against the barriers of the law and of the evidence which encompass her about, in order to drag that sick and fragile body to a miserable death? Is it punishment they seek? She has suffered more already than the King of terrors in his most frightful form can inflict. If she had been broken on the wheel, her limbs disjointed, and her flesh torn in piecemeal by the most fiendish skill of the executioner, her tortures would have been merciful compared to the racking which sunders into fragments the immortal mind. There is no arrow in Death's full quiver that can

give this young breast a new sensation of agony. She has sounded all the depths and shoals of misery and pain. She has lived in

"A whirling gulf of phantasy and flame."

Restore her by your verdict to the soothing influence of friends, of home. Let her go and lay her aching head on the maternal bosom of that Church which for eighteen centuries has tenderly ministered to her children in distress. Let her go and seek, in the love and mercy of the Father of us all, consolation for the cruelty and inhumanity of man. * * *

But it is claimed that a conviction must be had for the sake of example. You have been told that the people of the District of Columbia demand it. I would not bring such an argument into court, but when here I will meet it. If it be true that you desire examples for the correction of vice and the preservation of morality, I pray you not to commence with the humblest, the feeblest, and the most helpless. But I deny that the condemnation of the defendant is demanded by the people of this capital. Who are they who ask her blood at your hands? I know this people, and to some extent I think I may speak for them. I have been the recipient of their constant kindness while in their midst, and as a representative in Congress I have, in return, dealt with them in a spirit of liberality whenever I have known their wishes. You were told that the defendant came here from a distance—that the States were pouring their criminals in upon you, and therefore she must suffer as a warning to others. Such a statement is unjust to your people. You want justice, and justice alone, administered upon all; and who believes that this girl's life is required as an offering upon the altar of public justice? I repel this imputation upon the intelligence and humanity of this kind and hospitable district. When you are discharged from your protracted confinement and return to your homes, as you will in a few hours, ask those whom you meet there, whether they desired you to cut the feeble thread of this girl's life by your verdict. I will abide by their answer. To no one has she appeared as the criminal, save to those who conduct and inspire the prosecution. To all others in your midst she has presented the sad spectacle of calamity and misery. Her purity, her gentleness, her guileless truth, shining out in every word and act, have won to her side in this dark hour, your oldest, your best, and most honored citizens. Her prison abode has been brightened by the presence of the noblest and purest of her own sex, and delicate flowers from the loftiest station in the world have

mingled their odors with the breath of her captivity.* Men venerable in years, and strong in their convictions of the principles of immutable right, have been drawn to her assistance by an instinctive obedience to the voice of God commanding them to succor the weak, lift up the fallen, and alleviate the distress of innocence. And now for Mary Harris, and in the name of Him who showered His blessing on the merciful, who spoke the parable of the Samaritan, who gave the promise to those who feed and clothe the stranger in their gates, and who visit the sick and them that are in prison, I thank the people of the capital. Add one more obligation for her to remember, until the grave opens to hide her from the world. It is in your hands to grant. The law in its grave majesty approves the act. The evidence with an unbroken voice demands it. Your own hearts press forward to the discharge of a most gracious duty. The hour is almost at hand for its performance. Unlock the door of her prison, and bid her bathe her throbbing brow once more in the healing air of liberty. Let your verdict be the champion of law, of morality, of science. Let it vindicate civilization and humanity, justice and mercy.

Appealing to the Searcher of all hearts, to that omnipresent eye which beholds every secret thought, for the integrity of my motives in the conduct of this cause, and for the sincerity of my belief in the principles which I have announced, I now, with unwavering confidence in the triumph of innocence, surrender all into your hands.

Closing Remarks of District-Attorney Carrington.

Gentlemen of the Jury—You see before you on trial a woman. It is a case somewhat unprecedented in the history of this tribunal. I plead the cause of woman. Go to yonder churchyard. See that mother weeping over the honored grave of her only boy. He has fallen in his country's cause. Who is she? Nobody, in comparison with Mary Harris, the heorine of the day. See that wife diffusing life, light, joy, and hope around the family circle—the idol of a husband's heart and the guardian angel of her children. Her little curly-headed girl is kneeling by her side, and repeating her evening or morning prayer. Rise from your knees, my pretty child; you are wrong. When your little heart is wrung, don't go, as your hymn-book says, and tell Jesus. Arm yourself with a

* It may not be improper to state that Mr. Voorhees here alludes to a beautiful bouquet sent to the prisoner by Mrs. Lincoln, before the White House had been darkened by murder, the center flower of which signified, in botanical language, "Trust in me."

deadly weapon, and avenge your own wrongs with the red hand of violence and of crime. Mary Harris, the model of female excellence, held up before the public for the admiration and imitation of our mothers, wives and daughters, has said that the ladies of Chicago carry deadly weapons and avenge private wrongs, whether real or imaginary, by private means, and we intend to introduce this fashion into the city of Washington. Permit me here to say, that if the voice of woman could be heard—gentle, lovely, virtuous woman—she would denounce this slander of Mary Harris and the Devlins as an insult to every honest and virtuous lady in the land. I yield to no living man in admiration for true female character. I have known the inexpressible tenderness of a wife's, sister's, and a mother's love. You have all. We each have seen the noblest exhibition of true female character during the unhappy strife which has existed in our country for the last four years. Did you ever go to yonder hospital? See that young man. He is pale, attenuated, and emaciated. He has received some terrible wound, while fighting in his country's cause. He is far away from family and friends. The agents of the Government are doing all that humanity and duty can suggest for his comfort and relief, but he is not satisfied. No kind mother stands by his bedside to cool the fevered brow. But hark! He hears woman's gentle voice, perhaps one which he has never heard before, but it is woman's voice. It falls upon his ear like the name of home in some distant land, or rain-drops in a thirsty desert. She administers to his wants, and whispers words of comfort and of consolation. He revives; he shoulders his musket and strikes another blow for his government and his flag. Perhaps his last hour has come. Ever faithful, gentle woman, points him to a Saviour's dying love; and as the world recedes from his view, like a true and valiant soldier of the cross, he triumphs over death and the grave. When the noble daughters of America were kneeling by the bedside of the dying soldier, where was Mary Harris? That was a time when an appeal was made to every woman who had a heart to love her country and her race. Where, then, was Mary Harris, the model of female excellence? Arming herself with this instrument of death, practicing the use of deadly weapons, going in company with one of the Devlins to Quincy street to a house of assignation without a protector, and at last imbruing her hands in the blood of one who had drawn his sword in his country's cause; and you are called upon to approve, justify, and applaud this cruel and bloody deed. Are we Christians? Do we live in a Christian age, a Christian community, and do we worship the Prince of Peace as the only true and living God? Gen-

tlemen of the jury, have you considered the awful responsibility that rests upon you? I have, and I pray that God may give me grace to discharge my duty.

Appeals have been made to your sympathies; and that is all, as I will show. Sympathy! sympathy! sympathy! and nothing else, and with unusual zeal and eloquence. Good Heaven! Behold what an array of counsel. In Joseph H. Bradley you behold the Ajax Telemon of the defense. In my friend William Y. Fendall you behold the young, the ardent, the armorous Tydides, not casting his javelin at the Goddess of Love as she flies through the air on her way to heaven, but, with his armor off, kneeling at her feet. [Laughter.] In Judge Mason you behold the sweetly speaking Nestor of the Grecian camp. [Laughter.] In Judge Hughes the wise, the prudent, the cautious Ulysses. [Renewed laughter.] In the Hon. Daniel W. Voorhees you behold the fierce, implacable, irresistible Achilles [laughter], and even old Agamemnon (pointing to the judge on the bench) himself, can never look at the gentle sufferer without a sigh expressive of his sympathy; and there sits the lovely Helen, bathed in tears, surrounded by her female attendants, urging on these sturdy warriors to deeds of superhuman valor. Here I stand, aided only by my efficient and accomplished assistant.

Gentlemen of the jury, am I not an object of commiseration? I saw some of you crying, but I think you cried in the wrong place. Were you concerned for me? O! no! gentlemen, don't be alarmed. Courage, gentlemen! I stand clothed in celestial armor, behind the broad ægis of the law, and their javelins fall harmless at my feet. I hold up the law, and thus I roll back the tide of sympathy that has been pouring into the jury box. I remind you of your solemn oaths, and then you dry your tears, and nerve yourselves to the discharge of your stern and solemn duty.

Now, gentlemen, as my friend, Mr. Wilson, said, what do we care for Mary Harris? So far as she is concerned, you may put her in a bandbox and send her home [laughter]—not to the Devlins, however—God forbid!—[renewed laughter]—but to her father; and I will tell you, before taking my seat, how it can be done without doing violence to any man's conscience.

Gentlemen of the jury, the curtain rises. The scene is laid at a boarding house in the city of Chicago. The heroine of the bloody tragedy makes her appearance—a good, sprightly, black-haired girl. She was without either father or mother at that time. It is then she forms the acquaintance of Louisa Devlin, another beautiful, charming and accomplished lady. Louisa Devlin invites her

to go to her millinery establishment. Prompted by an "insane impulse," she accepts the invitation. [Laughter.] What sort of a millinery establishment was it? I wanted to find out, and in the most courteous and respectful manner, for no one is more courteous to a lady than myself, I asked her how many young ladies she had in her employment. She threw herself back on her dignity and said, "That is my business, and none of yours." There is Mary Harris in a millinery establishment, the character of which the proprietress is ashamed to describe.

Judge HUGHES—May it please your honor, I dislike to interrupt counsel, but where, in a closing argument, the evidence is clearly misstated, an interruption is not only tolerable, but it is the duty of counsel, whose client is affected thereby, to so interrupt. There is no evidence here whatever as to the character of Miss Devlin's house. It is true the district attorney did ask her how many persons she employed in her house, and she replied, "That is my business." An appeal was made to the court, and the court directed her to answer the question, but a discussion springing up at the time, the question was lost sight of, and no answer was given.

The DISTRICT ATTORNEY—May it please your honor, I did not interrupt counsel in their argument, and I hope they will not in mine. If I misstate the evidence, which your honor knows I will not do intentionally, I have no doubt you, sir, will correct me.

The COURT—A counsel, in the closing argument, knowing that there is no one to come after him, ought to studiously keep himself within the prescribed limits, unless he wants to be interrupted at every stage. He ought not to pervert or misstate the evidence—I do not mean to say that you have done so in this case—but I do think that there is nothing in the refusal of Miss Devlin to answer that question to justify the suspicions which have been inferred by the counsel.

The DISTRICT ATTORNEY—Is that a question of law, your honor?

The COURT (with emphasis)—It is a question of law, sir.

The DISTRICT ATTORNEY—Gentlemen, after the attack which has been made upon Dr. Burroughs—

The COURT (very earnestly)—You shall not retaliate upon Miss Devlin for an attack upon Dr. Burroughs. You must confine yourself to the legitimate application of your remarks to the evidence of the Misses Devlin. It is an abuse of your position to make such an attack as that upon such grounds.

The DISTRICT ATTORNEY—What had I said, may it please your honor?

The COURT—You know, sir.

The District Attorney—You had not heard, sir, for I had not completed the sentence. What I intended to say was this: That after the attack which had been made upon Dr. Burroughs by the learned counsel, had I not a right (they justifying that attack upon the testimony of the Misses Devlin) to attack her testimony?

The Court—You shall not retaliate upon the Misses Devlin. You have a perfect right to attack the Miss Devlin's testimony as to its inconsistency, either with itself or with the other evidence, but to launch out into such a latitude of inferences as that you were going upon, in regard to the character of the house of the Misses Devlin, whose reputation has not been attacked, either for truth or in any other respect, I cannot permit it in a closing argument.

The District Attorney—You will bear in mind, gentlemen of the jury, that I did not interrupt the learned counsel. You heard the attack upon Dr. Burroughs, of which I shall have something to say hereafter. You know I must not dare to lay my fingers on the Misses Devlin.

Mr. Wilson, assistant district attorney, during these interruptions in the course of Mr. Carrington's argument, advised him to take his seat. Mr. Carrington said, "No, I will complete my argument."

Mr. Carrington—Again I say, and I will endeavor to argue, under the instructions of the court.

The Court—Well, proceed.

The District Attorney—I *will* proceed.

The Court—In order.

I am aware that there are some persons who have a prejudice to ministers of the Gospel, and are glad of an opportunity to assail them. And there are some persons, also, who have a prejudice to members of Congress. I will put a "hypothetical" case.

Upon one occasion I put an old gentleman upon the stand to prove the bad character of a witness. He testified that he was a person of very bad character. What did you ever know or hear of him doing wrong? Nothing in particular; but I have seen him day after day, and night after night, associating with members of Congress and other loose characters. (Laughter.)

Now, this is very improper. I like members of Congress just as well as other people, when they behave themselves. I have no prejudice against any class of my fellow citizens. You know my sentiments on this subject. I have for years been warring against sectional feeling and prejudice of every kind.

But, gentlemen, I understand the object of the assault, and I think you must perceive it. These gentlemen know they cannot injure Dr. Burroughs in the estimation of the public, or in your estimation, but they desire to divert me from the prosecution of Mary Harris to his defense; to divert your attention from the murderess to the brother of the deceased; but I am too old a war-horse to be caught in that way. What is the rule of law, gentlemen, on this point? There are three ways of contradicting a witness. First, by assailing his reputation for veracity; and why didn't they attempt that? They dared not do it, for the reason that he stood too high. He told them who he was—where he could be found; and yet not a witness, male or female, with the host of friends that this beautiful murderess has, could be found to assail his reputation for veracity. The second mode of contradicting a witness is by showing that he has made different statements at different times in regard to the same transaction. Was not the statement of Dr. Burroughs clear, consistent, honest? He would say now what he said yesterday, or would say to-morrow. The third mode is by proving a different state of facts by another witness. What witness contradicted him?

(The district attorney here turned towards Miss Louisa Devlin, paused for a moment, and then said):

Yes, Louisa Devlin! And how does she contradict him? Why, in regard to an immaterial fact; and—you will, your honor, pardon me, for I do not wish to go against the instructions of the court—is John C. Burroughs, the honest, Christian gentleman, to be denounced in court, and is my mouth to be sealed when they rely upon the testimony of this Louisa Devlin? Who is Louisa Devlin? When asked about her business, her color would come and go. By her own admission, she went to an assignation house on Quincy street on a fool's errand.

Mr. Bradley.—I must interrupt the counsel there. Louisa Devlin never went to that house.

Mr. Carrington.—Jane Devlin did. (Turning to Louisa Devlin.) I wonder if any man ever called her ducky [laughter], his darling, his rosebud, or his sugar-plum? [Renewed laughter] Do you suppose it would have given her paroxysmal insanity? [Great laughter.] I have no doubt it would have excited her very much, for, judging from her looks, she ain't used to it. [Renewed laughter.] And this is the woman upon whom they rely to contradict the honest, Christian gentleman! She is indeed the Iago in this bloody tragedy; for Mr. Bradley told you, in his opening address, that this was the old story of Othello. It was hatred and

jealousy that urged Mary Harris to the commission of this atrocious murder; for you remember she told her lawyer that her love had turned to hatred. And, gentlemen of the jury, it was the desire of money that prompted Louisa Devlin to fire the jealousy of this love-sick girl, preparatory to a suit for a breach of promise of marriage, expecting to share the damages, and I will prove it from the evidence before taking my seat; for, notwithstanding the eulogium pronounced upon her, I say that she is a woman without delicacy, without refinement and sensibility, for during this trial she has sat here giggling while her friend was on trial for her life, as though she were on a debauch in Quincy street, Chicago, at the house of Ellen Mills.

Mr. BRADLEY.—May it please your Honor, I denounce such an accusation in the strongest terms that man can. There has not been one word of reproach cast upon Miss Devlin from the beginning to the end of this trial, and I do say that no gentleman would use such language towards a woman.

The DISTRICT ATTORNEY.—I shall not be betrayed into any indiscretion, if the object is to insult me. I have only discharged my duty as in my humble judgment seemed proper. I make the same remark in regard to the attack upon Dr. Burroughs.

Mr. BRADLEY—I do not wish to insult you; but I do say the man who denounces this woman without the evidence in the case warranting it trespasses beyond the license of counsel, and abuses the character of gentleman.

The DISTRICT ATTORNEY.—All I have to say is, that I return the insult; your conduct has been ungentlemanly.

Mr. BRADLEY.—You can return the insult as much as you please. I despise you. Say what you please to the jury, I shall not interrupt you again. Here is a chip on my head: come and knock it off. [Laughter. About this time the court called the marshal.]

[The quarrel with the court and side remarks of district attorney with counsel are not commended.]

* * * * * * * *

Prompted by "hatred." Out of her own mouth do I condemn her. Prompted, not by "insane impulse," but by hatred, she comes to the city of Washington to institute a suit for a breach of promise of marriage. She does not put her writ in the hands of the marshal, but she goes in person to the Treasury Department—let us admit with the writ in one hand and the pistol in the other. When she arrives there, she inquires for Mr. Burroughs. She is told that

there are two gentlemen there of that name; and this woman, who it is attempted to be shown to you was insane, says that she wants to see Mr. Adoniram J. Burroughs, and examines the register, finds his name, is shown to his room, and looks in. She does not fire. Was that the best opportunity? No! Mrs. Woodbridge was, I believe, in a direct line with Burroughs. She might have killed both. There he is at his desk in the discharge of official duty. Old Mrs. Woodbridge sitting near him. She first sees the person and is prompted to get up and ask what she desires, and to extend an invitation to her to walk in. But just then she retires. How far, gentlemen of the jury? Down to that clock, which has been explained to you in the testimony, and there takes her stand. How long does she remain there? As I said in my opening address, and as appears, I think, from the evidence, there was time to hear the ticking of the clock and observe the movements of the hand. There was time for the clerks to be discharged, for young Burroughs to make his arrangements for the next day, and start on his way home in company with a companion. There was time for passion to subside and reason to resume its sway. There was time for "insane impulse" to pass away, and the power of volition to return. He passes by. She fires at him deliberately. He falls; she fires at him a second time, aiming directly at his head. Then she endeavors to escape, and losing her way feels the heavy hand of justice upon her. She is arrested. She is cool, calm, collected. She told the officer that this man had injured her. She wanted revenge, and would have it at the risk of her life. She showed no emotion until the bleeding, mangled corpse of her murdered victim is brought into her presence. And this is evidence of insanity. It is evidence, gentlemen of the jury, of sanity. It is woman's nature speaking out. When Lady Macbeth was reproving her husband for his irresolution, she said, "I have done the deed, but the gray-haired Duncan resembled my father as he slept." Proud, cruel, ambitious woman. Still she was a woman. So Mary Harris, having accomplished her purpose, and when she sees before her the bleeding evidence of her guilt, suffers the pangs of remorse. This is sanity. Can you interpret it to be evidence of insanity?

If a man or a woman, prompted by revenge, can lie in wait and commit a deliberate, willful murder, and science call it "insane impulse," of course Mr. Bradley will agree with me when I say, "Dissolve society into its original elements, raze your churches, your courts of criminal jurisprudence, close your Bibles, and tell your daughters to learn to be marksmen, and to arm themselves with a pistol, and the assassin's dagger. When the husband goes

out to work for his daily bread, his wife should stand by his side, with a pistol in one hand and a bowie-knife in the other, to protect him against the "insane impulse," of some wicked and revengeful woman, who wishes to gratify her revenge against him perhaps for some youthful indiscretion."

It is throwing open the doors wide to violence and crime, and I ask, "What man in the community is safe, if a jury so far mistake the law as to acquit this woman upon the ground of "insane impulse?" By such an absurd verdict, you say to every wicked woman in the city of Washington, kill a man for revenge if you please, and then take care to tear your hair, cry, and cut up a few antics, and we will call it insane impulse, and thus we will not only approve, but applaud the act.

* * * * * * * *

Now, I propose to show that he was mistaken in all these facts. Then, gentlemen, if I show the causes do not exist upon which he bases his opinion, of course the effect of those causes cannot follow as he supposes. In other words, gentlemen, if these are the facts upon which his opinion rests, and I show you that these facts do not appear from the evidence, the opinion is hypothetical, and cannot be regarded by you in forming your verdict. He erects a superstructure upon these four stones. I intend to remove them one by one, and then the entire fabric falls to the ground. First, then, gentlemen, was there a marriage contract? A marriage contract, like every other contract, requires the consent of both parties. I defy you to discover a marriage contract from any of the ninety-two letters offered in evidence. But let us admit, for the sake of the argument, that there was a marriage contract. I maintain that, if there was, it was violated by the lady herself.

Mr. Carrington here referred to a letter, and humorously said. I cannot read this letter, gentlemen, perhaps, as it should be read. I saw some of you crying. What are you crying about? *I* cannot cry. I will have to get my friend, Mr. Bradley, or Judge Mason to cry for me.

Mr. Bradley—If you had half as much sensibility as we have you would cry also.

Mr. Carrington—Cry for what? [Holding up the letter.] Perhaps I committed a mistake, gentlemen. I should have put some one of these ladies on the stand as an expert. This letter echoes the groans of a discarded and despairing lover. How, then, stands the case? The lady discards her true-hearted, honorable lover; and he, like a man of honor, offers to return her her letters and her portrait, and try his fortune in another quarter. The lady,

exercising a woman's right, in a spirit of coquettishness, discards the man she loves, and then, fired by the demon of jealousy, murders him for marrying another, her superior in all respects. What, then, is the opinion of Dr. Nichols worth, when he assumes she was suffering because her lover had violated his promise of marriage? I said in my opening address, and I now repeat it, that A. J. Burroughs died without a stain upon his honor. Is there anything dishonorable in this? Is it dishonorable to love a pretty girl and to tell her so? Then let him who is without sin cast the first stone. And when discarded by one pretty girl, is it dishonorable to love a prettier and a better girl, and to tell her so? Burroughs loved Mary Harris tenderly and devotedly, if these letters breathe the spirit of true love. He was discarded by her; and meeting with another lady, her superior, loved her, offered her his hand and heart, and, like a true-hearted woman, she neither flirted nor coquetted with him, but promptly gave him all that a woman has—a woman's love.

Perhaps there are some higher-law men upon that jury, who have determined to take the law into their own hands, and mold it to suit their own views. If so, it is my duty to inform you that you commit the crime of perjury before your country and high Heaven; for you have solemnly sworn to decide this case according to the law as it is, and not as you think it ought to be.

How often do you hear this defense of insanity? It is relied on in every desperate case of murder, and it is generally treated with contempt by honest and intelligent jurors. If some poor, trembling criminal in rags and tatters should dare to make such a defense as this, it would be hooted out of court. Why should a different rule be adopted in the case of Mary Harris? Why was she not subjected to the inspection of the jury? For your custom is, when the defense of insanity is made to examine the prisoner carefully for yourselves. Whenever I hear this defense of insanity, it reminds me of a remark that was made to me by my predecessor, Mr. Fendall. He had just purchased a book upon homicide. He met old Col. Benton on the street, when the latter asked him what new work he had. He replied, "Sir, I have a work on homicide." "Why," said Col. Benton, "your money has been misspent. There are only two defenses in cases of homicide in this country—self-defense and insanity." Col. Benton was right, gentlemen of the jury. If a man injures another, and the injured party kills him, he pleads self-defense. If a man kills another, who has never injured him, it is said that there was no motive, and therefore he was insane. The result is, that skillful counsel may per-

suade judges and jurors, who have not the firmness and intelligence to discharge their duty, to give unbridled license to the crime of murder. Put your foot upon this nonsense of "insane impulse." If you do not, I will. If you approve of this defense by your verdict, it shall be against my earnest and solemn protest. I now solemnly protest against this libel upon the laws and religion of my country. When the excitement of the day passes off, and murder, crime, and blood run riot in your city, no man or woman shall say it was I who did it.

It is true that Washington juries have heretofore approved the redress of private wrongs by private means, and juries have been severely censured for it. I never complained of the verdict of a jury, and I intend to express no opinion in regard to your conduct on former occasions. Sickles—and I mention his name with respect, for he has proved to be a true patriot and a gallant soldier—murdered a man who had, or whom he supposed had, wronged him in the tenderest point, while he was standing near his house, flaunting a handkerchief in front of his window, in a moment of frenzy, which might with some plausibility be called a species of "paroxysmal insanity." Jarboe went with his sister into the presence of her seducer, and demanded reparation. He attempted to draw a weapon, when the indignant brother shot him dead. This, too, with some show of plausibility, might be called a case of "paroxysmal insanity."

On the other hand, Daniel Woodward slew his wife in a fit of jealousy, and was convicted, sentenced, and executed. Mary Harris, from jealousy and a desire of revenge, deliberately murdered the man who had loved her and never wronged her.

Gentlemen of the jury, it is idle to close our eyes to the truth. It was not insanity, either paroxysmal, scientific, or by whatever name you may be pleased to call it, but it was jealousy! jealousy! I have seen a personification and representation of the passions upon canvas—hatred, envy, malice, revenge, and jealousy; and in this collection of imaginary demons the most horrible to behold is the green-eyed monster. But it is no excuse for crimes. It never has been, and never can be, where the law is properly administered. Mr. Bradley, in his opening address, admits that this is a case of jealousy. You remember his remark, "It is the old story of Othello." But there are marked points of difference between his and the present case. Othello, when he entered the chamber of his true and faithful wife, on the fatal night when she was doomed to die, said:

"Desdomona, have you prayed to-night?
Yes, my lord.
Bethink you of any sin unforgiven?
Yes, my lord; loving you too well.
Then pray; for I would not kill thy unprepared soul."

Not so with Mary Harris. She strikes young Burroughs down, and sends his soul into eternity without a word of warning, or time to breathe a single prayer. After the bloody deed was done, Othello relents, exclaiming:

"If the world were one entire and perfect crystallite,
I would give it all to restore thy precious life."

Not so with Mary Harris. She is now seen, like a horrid ghoul, burrowing in the grave, and feeding her revenge upon the remains of her murdered victim; and through her counsel, her organ and representatives, who speak her sentiments and represent her views, she endeavers to destroy the reputation of his only brother, the natural guardian and protector of his widow and his orphan.

Now, gentlemen of the jury, I reach the last and, indeed, the only real defense to this indictment. I approach it with fear and trembling, for I do not see how I can meet it successfully, in view of the extraordinary, but powerful, sympathy that has been elicited on behalf of the prisoner. It is this: That she is a pretty, delicate, little woman. That is all. This is really the only defense, and you know it. If you acquit this woman, it will be because she is a woman; and all this nonsense about insanity and moral justification are simply to afford you a pretext. It is said that she wanted to be the wife of the deceased. Wife, indeed! That name is sacred as heaven itself. It is associated in our minds with all that is good, amiable and attractive. And what sort of a wife would this woman have made, who had the heart to conceive, and the hand to execute, this bloody deed? Had she married young Burroughs,

"No heavenly choirs had the hymenean sung."

It might have been said, with more truth than poetry,

"Nor Hymen, nor the Graces should preside,
Nor Juno to befriend the blooming bride;
But Fiends, with funereal bands, the process led,
And Furies waited at the genial bed."

When a man of honor strains to his bosom the woman he loves, and calls her his own, his darling wife, and imprints the melting kiss upon her matron lips, he must feel and know that she is

"As pure as an icicle,
That hangs from Diana's temple."

I admit that Burroughs once loved Mary Harris. But she was unworthy of his love, for she never truly loved him; while, judging from these letters, he loved her with an intensity and ardor which is creditable to his heart, if not to his head. These letters contained the most violent protestations of love. Like Shakespeare's Romeo, young Burroughs was affectionate, demonstrative, and violent in his attachments, but honorable and true.

Go back in imagination, gentlemen of the jury, twenty years. Think, each one of you, of the sweet words you have whispered into the ears of the girl you love, and the *billet-doux* that you have written her in those halcyon and happy days. How would you like to have them exposed to the vulgar gaze of the public? If such demonstrations are evidence of insanity, you and I, and every true-hearted man, should be dressed in straight jackets, and turned over to the tender mercies of Dr. Nichols, this propogator of the new and dangerous doctrine—this modern philosopher of the humbug of "paroxysmal insanity."

Let it not be said that eminent criminals, defended by prominent public men, may commit a crime with impunity in the Federal metropolis. Why did not this prisoner, I repeat, take the life of the deceased in Chicago, if he injured, or if she supposed he had injured, her? Did she suppose, as many do, that here she could gratify her revenge with impunity? I say what I have often said before, that the citizens of Washington are a law-loving, law-abiding, and a religious people, but it is a rendezvous for thieves, murderers, garotters and adventurers, of both sexes and of every variety—a sewer for all the vices and immoralities of the age in which we live. Our only hope of safety is in the firmness and fidelity of the judiciary. I plead the cause of law, order and religion; and if you dishonor the records of this court by an approval of this bloody deed, it shall be against my earnest and solemn protest. This is a central and a radiating point. We exert an influence in all sections of this great confederacy. Besides, strangers judge our people from the manners and customs of the Federal metropolis. I charge you, then, gentlemen of the jury, to remember the solemnity of your position, and take care how you outrage the public sentiment, and libel the community of which you are the representatives on this occasion. I see what is passing in your minds. I can read your thoughts. You pity the prisoner at the bar. So do I. You wish to shield her from the consequences of her crime. I have no objection to this, provided the law is enforced. How is it to be done? It is the simplest thing in the world. The legislature, in its wisdom, has provided for such cases.

Convict the prisoner, and then commend her to the mercy of the Executive. Do this, and your object is accomplished without violence being done to any man's conscience. If the prisoner, in view of all the circumstances, deserves clemency, she will receive it; but in my opinion, stern, inflexible justice is true mercy. I would have you temper justice with a spirit of mercy, but I would not have you sacrifice the cause of justice to mercy. When man broke Heaven's high law, his Creator looked down upon him with compassion. He would show him mercy, but the claims of justice must be vindicated; and in the counsel of eternity He determined to give His well-beloved and only-begotten Son to die, that guilty man might live, and by his imputed righteousness alone we are saved. I charge you, then, in the same spirit, to do justice, and then remember mercy. You are now the great conservators of the public peace; and I charge you, by the solemn sanction of a juror's oath, in the eloquent language of another, "that adamantine chain which binds the integrity of man to the throne of eternal justice, do your duty in the fear of God and without the fear of man."

At the conclusion of Mr. Carrington's remarks the case was given to the jury. They then retired to their room, where they remained about five minutes, when they returned, and rendered a verdict of "Not guilty."

Thereupon the court adjourned.

DEFENSE OF JOHN E. COOK.

Extract of Argument by D. W. VOORHEES, *Delivered at Charleston, Va., November 8, 1859, upon the Trial of* JOHN E. COOK, *indicted for Treason, Murder, and Inciting Slaves to Rebel, at Harper's Ferry Insurrection.*

This beautiful and eloquent appeal for mercy may be better understood when we consider that Cook had confessed his crime, and mercy was his only plea. This speech is said to be the greatest effort of Mr. Voorhees' life, but seems a little less elaborate, and even less pathetic, than the famous Mary Harris address, in another chapter. The parting with the jury is a touching picture of rhetorical eloquence.

With the permission of the Court:

Gentlemen of the Jury—The place I occupy in standing before you at this time is one clothed with a responsibility as weighty and as delicate as was ever assigned an advocate in behalf of an unfortunate fellow-man. No language that I can employ could give an additional force to the circumstances by which I am surrounded, and which press so heavily on the public mind as well as on my own. I come, too, as a stranger to each one of you. Your faces I know only by the common image we bear to our Maker; but in your exalted character of citizens of the ancient and proud commonwealth of Virginia and of the American Union, I bear to you a passport of friendship and letter of introduction. I come from the sunset side of your western mountains, from beyond the rivers that now skirt the borders of your great State; but I come not as an alien to a foreign land, but rather as one who returns to the home of his ancestors and to the household from which he sprang. I come here not as an enemy, but as a friend with interest common with yourselves, hoping for your hopes, and praying that the prosperity and glory of Virginia may be perpetual. Nor do I forget that very soil on which I live in my Western home was once owned by this venerable commonwealth, as much as the soil on which I now stand. Her laws there once prevailed, and all her institutions were there established as they are here. Not only my own State of Indiana, but also four other great States in the northwest, stand as enduring and lofty monuments of Virginia's magnanimity and princely liberality. Her donation to the general Government made them sovereign States; and since God gave the fruitful land of Canaan to Moses and Israel, such a gift of present and future empire has never been made to any people. Coming from the bosom of one of these States, can I forget the fealty and duty which I owe to the supremacy of your laws, the sacredness of your citizenship, or the sovereignty of your State? Rather may the child forget its parent, and smite with unnatural hand the author of its being.

I am not here, gentlemen, in behalf of this pale-faced, fair-haired wanderer from his home and the paths of duty, to talk to you about the cold technicalities of the law, born of laborious analysis by the light of the midnight lamp. I place him before you on no such narrow grounds. He is in the hands of friends, who abhorred the conduct of which he has been guilty. But does that fact debar him of human sympathy? Does the sinful act smite the erring brother with the leprosy, which forbids the touch of the hand of affection? Is his voice of repentance, an appeal for forgiveness,

stifled in his mouth? If so, the meek Saviour of the world would have recoiled with horror from Mary Magdalene, and spurned the repentant sorrow of Peter, who denied him. * * * For my client I avow every sympathy.

If He who made the earth, and hung the sun and moon and stars on high, to give it light, and created man a joint heir of eternal wealth, and put within him an immortal spark of that celestial flame which surrounds His throne, could remember mercy in executing justice, when His whole plan of divine government was assailed and deranged; when His law was set at defiance and violated; when the purity of Eden had been defiled by the presence and counsels of the serpent—why, so can you, and so can I, when the wrong and the crime stand confessed, and every attonement is made to the majesty of the law, which the prisoner has in his power to make. * * *

Gentlemen, you have the case. I surrender into your hands the issues of life and death. As long as you live, a more important case than this you'll never be called to try. Consider it, therefore, well in all its bearings. I have tried to show you those facts which go to palliate the conduct of the prisoner. Shall I go home and say that in justice you remembered not mercy to him? Leave the door of clemency open; do not shut it by wholesale conviction. Remember that life is an awful and sacred thing; remember that death is terrible—terrible at any time and in any form. But when to the frightful mien of the grim monster, when to the chilled visage of the spirit of the glass and scythe, is added the hated, dreaded spectre of the gibbet, we turn shuddering from the accumulated horror. God spare this boy and those that love him, from such a scene of woe. I part from you now, and most likely forever. When we next meet—when I next look upon your faces and you on mine—it will be in that land and before that tribunal where the only plea that will save you or me from a worse fate than awaits the prisoner, will be mercy. Charity is the paramount virtue; all else is a sounding brass and a tinkling cymbal. Charity suffereth long and is kind. Forbid it not to come into your deliberations; and, when your last hour comes, the memory that you allowed it to plead for your erring brother, John E. Cook, will brighten your passage over the dark river and rise by your side as an interceding angel in that day when your trial, as well as his, shall be determined by a just but merciful God. I thank the court and you, gentlemen, for your patient kindness, and I am done.

THE CONSPIRACY CASE.

Trial concluded September, 1851, at Detroit, Mich.

This remarkable case occupied nearly four months in trial; enlisted the services of the most eminent counsel, including Messrs Wm. A. Howard, Jacob M. Howard, Wm. Gray and James A. Van Dyke, of Michigan, and John Van Arman of Chicago, Senator Wm. H. Seward, of New York, and others. Some 40 men were indicted; 12 convicted and sentenced, varying from five to ten years; 20 discharged; two died in jail. Four hundred and ninety-five witnesses were sworn, many from a distance of a hundred miles. The report of the trial, including evidence and arguments, is in book form, covering nearly 900 pages. Four of the arguments would cover 100 pages each. The story of the case, not found in the arguments here reported, is a story of a stupendous conspiracy by malicious men along the line of the Michigan Central Railroad, to destroy its property, in revenge for non-payment for cattle killed on its crossings. The road had passed from State control to a corporation. The State had paid liberally on similar cases, making a market for cattle. Many of the schemes of train-wrecking are most revolting and terrible to contemplate. The worst was to run a passenger train into a bottomless marsh near Leoni. This failed, by a freight train coming at a slow rate of speed in its stead. The other scheme was to burn the Detroit Depot, which succeeded. It is attempted here to give some of the eloquent periods from this battle of giants.

The long and deep public interest in this trial, the eminence of counsel, the issue investigated, the liberty of forty men, the expense of a half million of dollars, the effect on the prosperity of Michigan, all gave an inspiration to the arguments that often reached to grandeur and sublimity. The selections of eloquent appeals of Senator Seward and J. A. Van Dyke here given, are masterpieces of oratory, which, for breadth of thought, sublimity of expression, genius of statement, and forecast of our country's future, have seldom been equalled, if ever excelled, in modern court practice. This is one reason for the exception in going back of twenty years, to form a report of modern jury trials in the United States.

John Van Arman, then a rising young lawyer, comparatively unknown, worked up the case for the people, and made a

life-long reputation in his zeal, skill and ability exhibited. His speech is full of the fire and fervor of genius and originality. It touches all the details of the conspiracy and contains precedents from Cicero contending with Cataline in Rome. It was a master effort. The eloquent closing words of Senator SEWARD are given, with a more extended argument of JAMES A. VAN DYKE, then one of the leading orators in the West.

Among the effective paragraphs of Mr. VAN ARMAN are these:

GENTLEMEN—This is not a single crime, perpetrated by a single hand, proceeding from a single corrupt heart and directed against the interest and safety of a single citizen, but a long series of daring and dangerous felonies, originating in the combined purpose and will, and executed by the combined strength of a multitude, deeply perilling the safety, property and lives of the whole public, indicating the dangerous opinions almost absolutely treasonable and at war with social order, with the execution of the laws of the land, of public safety, and its importance is enhanced a hundred fold by the long series of crimes developed by this investigation.

The issue is, whether the men whose daring, lawless outrages have, for two long years, rendered the greatest thoroughfare through your State a scene of danger and death—whether you have before you any of the persons to whom the public owe the loss of a half million dollars, as well as the peril of life to thousands exposed on the line of this railroad. * * *

[Counsel had reverted to Mr. Van Arman's being sworn as a witness; to his employing spies, to which he replied at length, and of himself said, on the motive of the prosecution]:

I have a wife and children; necessity often calls them over this road; more than once within the last two years have their lives been imperiled and exposed to imminent danger along that track, and, as I firmly believe, at the hands of these very defendants. The lives of my wife and children have been plotted against, threatened on this road, by base and bloody ruffians, and as God will judge me for the assertion, gentlemen, I believe the men, the very men who plotted this destruction, sit here before me. For the motive which prompts me to pursue them, look into your own hearts. * * * Is it disreputable to engage in ferreting out this offense?

I know of one standard by which to determine the merits of any particular occupation, conduct or employment. That standard is *utility*; whatever is useful is honorable. This standard is simple

and practical. It has the object of all worthy actions. The merits of an act is determined by its effects, not its appearance. Was it necessary that those who heaped obstructions nightly along that track should be detected and defeated? * * * Did they give fair warning to the unwary traveler on his peaceful journey through the State? No; under the darkness of the night, with stealthy tread, like a lurking murderer, they crept from their thickets to place their dangerous obstruction or hurl their deadly missiles. As well may bloodthirsty savages demand the usages of honorable warfare, and complain of ambush and stratagem. In that most dangerous conspiracy (by Cataline) against the liberties of Rome, when Cicero determined to crush out the vile plot, he employed spies and soldiers to join the conspirators and receive at their hands the seal to the engagement; then he sent a band of soldiers to capture and seize them all together. Men alleged that day, as counsel have here, those who listened to the enemy are unworthy of credit. When told of the thunder cloud about to burst upon them, they answered: Men who will listen to such facts will manufacture facts; that with respect to the seal, the spies had forged it But while they were thus arguing, Cataline was forming his camp in Elmira. At last he rose in his place in the senate and said he would *drown the clamor raised against him in the best blood of Rome.* * * *

Of public opinion he said: What it approves to-day it condemns to-morrow, and he who obeys it is involved in constant absurdity and contradiction. He is the slave of a fickle and remorseless tyrant; trust it not, it will prove a snare and a delusion. Again, it is said this crime is unnatural; improbable for lack of motive.

All crime is irrational, unnatural, because the true office of reason directs men to pursue their own welfare. All crime is opposed to reason.

In human conduct passion always disputes with human reason. Often successfully. All crimes are the dictates of passion, not of reason. To assume that men all act from rational motives is to deny the very existence of crime. Reason teaches obedience to the laws of nature; yet we learn from the records of the past that men have constantly rebelled. From the very commencement, man, in his earliest footprints upon earth, has been stained with a brother's blood. * * *

The effort of counsel to disgrace these witnesses has been unwearied and persevering. They have tracked them through the whole course of their lives, seizing with malignant ingenu-

ity every act that could support an accusation or point a sarcasm. Their faults, their follies, have been rehearsed, their very misfortunes paraded before you, and not a suspicion ever conceived by human malignity, or uttered by the tongue of calumny against them, but has been revived, collected and repeated to you. Indifferent to their virtues, they treasure up their vices and erect a standard to judge of character. So the scavenger, as he creeps, with bended back and earthward eye, along your city streets and shuns the pleasant spots, the shaded walks, visiting the loathsome alleys and gutters for the foul, rejected matter, reeking, noisome, disgusting—gathered from the half-filled ditch, treasuring only what is foul! In all my experience I have never seen a man so treated. There is a class of men to whom this human hunt is a pleasant pastime—an exciting game. There is a kind of ferocity in human nature, a sort of blood-thirstiness, which creeps in men of weakness, who never attack the strong; but no sooner is a fellow mortal down, than they fall upon and tear him like vultures on a carrion—too cowardly to prey upon the living, they will descend into the grave, drag out the carcass from its moldering repose, and feed upon the festering remains. Let man be unfortunate, let him be down, and they hasten to this rich repast. But there are two kinds of men with which it is useless to make personal issues. The one whose character is *too bad to be made worse, the other so good that it cannot be injured!* No rank or position can screen a man from just censure due to wrong and injustice—right, even-handed justice to all, even the meanest. Equal rights—fair play, are the jewels dearest to the heart of every man.

* * * Does any man lack motives to stimulate loyalty to our institutions? Let him consider their glorious results! Let him trace the rapid advance of her hardy settlers across this vast continent, carrying the successive waves of daring emigrants far beyond the primeval forests; marking out State after State, and annexing them to the area of freedom over the wide plains of the far West, over the flinty summits of the Rocky Mountains and through the gorges of the Sierra Nevada, now rush the tides of emigration—a progress unrivaled in the history of the world!

A little over a half century, and our few, sparsely-populated colonies bordering the seas and rivers of the East, destitute of wealth, her rights often trampled on, her flag feebly supported by a handful of brave men. A half century more and our flag, born in triumph from the Gulf of St. Lawrence to the Rio Grande, from the Atlantic to the distant shores of the mighty Pacific! Its folds are

swept by the rude gusts that blow along the rock-bound coast of New England, and fanned by the gentle breezes that float over the golden sands of the Sacramento valley!

This industry and enterprise her sons have encountered, subdued every obstacle to their advancement. They mined their way through the flinty barriers of rock. The mountain gorges and deep morass have been leveled; "while through every vein of this vast empire flows the strengthening tides of *trade*, the calm health of nations!" These glorious achievements of labor, protected by wholesome laws and institutions; sustained by the unwavering loyalty of her citizens!

To that loyalty alone we owe the stability of our institutions; the prosperity they have bestowed upon that alone; can society look for protection? To the best virtue of good citizens I confidently appeal on this occasion for the vindication of the laws of our State, the protection of the lives of its citizens.

Weighted with character and prompted, as if by inspiration,

WM. H. SEWARD'S CLOSING WORDS

to the jury were:

GENTLEMEN—In the middle of the fourth month, we draw near to what has seemed to be an endless labor. While we have been here, events have transpired which have roused national ambition, kindled national resentment, drawn forth national sympathies, and threatened to disturb the tranquility of empires. He who, although He worketh unseen, yet worketh irresistibly and unceasingly, hath suspended neither His guardian care nor His paternal discipline over ourselves. Some of you have sickened and convalesced. Others have parted with cherished loved ones, who, removed before they had time to contract the stain of earth, were already prepared for the kingdom of Heaven. There have been changes, too, among the unfortunate men whom I have defended. The sound of the hammer has died away in the workshop of some; the harvests have ripened and wasted in the fields of others. Want, and fear and sorrow have entered into all their dwellings. Their own rugged forms have drooped, their sunburnt brows blanched, and their hands have become soft to the pressure of friendship as yours or mine.

One of them—a vagrant boy—whom I found imprisoned here for a few extravagant words, that, perhaps, he never uttered, has pined away and died. Another, he who was feared, hated and loved most of all, has fallen in the vigor of life, "hacked down, his

thick, summer leaves all faded." When such a one falls, amid the din and smoke of the battlefield, our emotions are overpowered, suppressed, lost in the excitement of public passion. But when he perishes, a victim of social strife; when we see the iron enter his soul, and see it, day by day, sinking deeper and deeper, until nature gives way and he lies lifeless at our feet, then there is nothing to check the flow of forgiveness, compassion and sympathy. If, in the moment he is closing his eyes on earth, he declares, "I have committed no crime against my country; I die a martyr for the liberty of speech, and perish of a broken heart," then, indeed, do we feel that *the tongues of dying men enforce* attention like deep harmony. Who has thus been withdrawn from our erring judgment to the tribunal of eternal justice? Yet it cannot be avoided.

If Abel F. Fitch was guilty of the crime in this indictment, every man here may, nevertheless, be innocent; but if he was innocent, then there is not one of these, his associates, who can be guilty. Try them, then, if you must; condemn him, if you must, and with him condemn them. But remember you are mortal, and he is now immortal; and that before that tribunal where he stands you must stand and confront him, and vindicate your judgment. Remember, too, that he is now free. He has not only left behind him the dungeon, the cell and the chain, but he exults in a freedom, compared with which the liberty we enjoy is slavery and bondage. You stand, then, between the dead and the living. There is no need to bespeak the exercise of your caution, of your candor and of your impartiality. You will, I am sure, be just to the living and true to your country; because, under circumstances so solemn, so full of awe, you cannot be unjust to the dead, nor false to your country, nor to your God!

The greatest effort was reserved for Hon. James A. Van Dyke, who crowned a brilliant career by an address that will long be admired for its art, eloquence, and wisdom—and even more—for its lofty conception of our country's future.

Nearing the close of this address (which is reduced from 140 pages), there occurs one of the finest pictures in American literature. It was an inspiration of a genius in the attitude of foretelling the future of American railroads:

"It *shall* speed onward, past the forests, still onward, through the gorges of the mountains, over the depths of the valley, till the iron horse, whose bowels are fire, * * shall be heard thundering through the echoing solitudes of the Rocky Mountains, start-

ling the lone Indian from his wild retreat, and ere long reaching the golden shores of the far-off Pacific, there to be welcomed by the glad shouts of American freemen, at the glorious event which has conquered time and distance, and bound them by nearer chords to older homes and sister States."]

Mr. Van Dyke, of Detroit, who closed the case for the people, was a man of rare genius. Erect, courteous, dignified in person, graceful in speech and manner, eloquent in voice and delivery, the soul of honor—a man of brilliant intellect and superior culture. He united manhood and oratory with excellent effect. His tall, well dressed form, smoothly shaven face and elegant manner, made him a Chesterfield of the Michigan bar. He was an Erskine in style of oratory. This was his greatest life work with a jury. He died in May, 1856, aged forty-three.

Mr. Van Dyke said:

May it please the Court and Gentlemen of the Jury—I cannot refrain from congratulating you that the long and wearisome investigation in which you are engaged, is so near to its close. Many months since, before the leaves were green or the flowers had bloomed, ere the spring-time had departed, and while our hopes and feelings moved in sympathy with the gladdening freshness which the season shed around us, you were summoned from your homes, comforts, business and pleasures, to assume a serious responsibility, in aid of the administration of justice. Since then, while we have associated together, and day by day discharged, I trust with patience and fidelity, our toilsome, but solemn duties, time has run its ceaseless course; the summer came with all its joy and brightness; it, too, has faded away, and already the crimson leaves of the forest warn us that autumn is passing its withering fingers over the face of nature.

I indulge in this thought, because it induces the mind to reflect upon our own condition, and the vanity of acting otherwise than under a deep sense of duty. Most of us have reached the middle age; *our* spring time has departed, *our* summer time has almost left us, *our* autumn is nigh, and ere long the descending snows of winter will fall upon our heads. All things teach the dread truth that "life is fleeting," and that we should move through its mazy paths of cares and pleasures, with hope and vision fixed on the eternity which lies beyond.

In this case, gentlemen, we have each a solemn duty to perform; let us discharge it with a high sense of the responsiblity which rests upon us.

In the views which I am about to submit to you, I will earnestly endeavor to treat this cause with the seriousness its importance demands, and with the candor and fairness due to you and to the court.

While I feel pleased in beholding the laurels which this trial has entwined around other brows, I will seek to gather none for my own. I will neither wander into the paths of fancy, nor address myself to those who sit *without* the jury box. I will remember, however dull it may render me, that my duty confines me to *this* cause; I will speak *only* of it and address myself *only to you.* I will pass over the case, gentlemen, as nearly as possible in the same order which has been pursued by the distinguished counsel who last addressed you for the defense. I shall not seek or hope to leave the impress of oratorical power upon your imagination, but trust, ere I conclude, to convince your reason, that *every* point urged by the defense is fallacious and without foundation in the facts and evidence before you.

* * * * * * * *

Gentlemen of the jury, while in some respects I rejoice, in others I regret that we are here to-day. I rejoice that, although during the long period we have spent together, death has swept away some connected with this trial—that although disease has at times visited you or your families, yet that God in his providence has, amid your prolonged and arduous cares, preserved you in health and vigor to discharge the high duty you owe to them and your country. I am glad that we can here apply our minds to the calm investigation of truth; that while the Sun of Heaven lights up our beloved city, and sheds its radiance upon the fields and forests and beautiful river within our vision, we can sit free from the excitements of life, and, with an eye single to the ends of law and justice, devote our best energies to the necessary, though laborious, task of a fair and candid examination of the mass of evidence which has accumulated in this cause. I regret, on your account, that the responsibility of a decision has fallen upon you, and for myself, that it has devolved upon me to say ought about these unfortunate prisoners; yet they are duties that may not be passed by or put aside. That you will discharge your duty in justice, though tempered with mercy, I have no doubt. I would, gentlemen, that I could perform mine as well. You must expect from me, gentlemen, no eloquent declamations, for I will frame no dazzling theories upon a misrepresentation or perversion of the testimony, whether accidental or designed. I will not weave a single wreath of fancy, but will seek to bind your minds and my own to the plain

and unadorned truths that are apparent in this case, and which alone should influence you. Although I have to follow in the wake of elaborately prepared and eloquent speeches, I will not seek to emulate them. I will neither quote Latin, or decorate my periods by selections from the classic pages of Addison; nor will I follow the counsel through his terrible philippic upon the leading witness of the prosecution, which I fear lost much of its force upon minds familiar with the strangely similar portraiture of Junius, drawn in the "Vision of Judgment." But while I refrain from pursuing the meteoric fancies, eloquent philippics and sublime apostrophes to the "sainted dead," which have shed a false, though brilliant light upon the dark details of crime revealed to you day by day, I will go through the case fairly and discuss it fully. I will nothing extenuate, nor aught set down in malice. I will base my arguments upon the testimony, not as I *would have it*, but *as it is*. I will speak not to the world, *but to you*, who can correct and hold me in judgment, if I fail to redeem the promises of fairness and candor which I make. Heaven can witness for me that I desire no fame at the expense of these unfortunate men. I will use no bitter words; I will affect no bitter loathing; I will assail neither man, woman nor child, except under the urgent pressure of duty and necessity. I wish I could be spared the painful task of doing so at all. During our labors, death has visited some of those who awaited your judgment—it is to be regretted. By none was it more lamented than by myself and the gentlemen associated with me, for the prosecution. I hoped that respect for the inscrutable decrees of Providence would have sealed all lips upon that sad occurrence. If it had rested with the prosecution, the dead, however guilty, would have been suffered to slumber in silence. Neither you nor I could close our eyes to the solemn fact that, "those who were, are not." Death was in our midst, and though silence might vail its horrors, like the skeleton at the Egyptian feast, its unseen presence was felt by all. But for no purpose, for no end, not even to convict the guilty, would the prosecution have invaded the tomb and dragged the image of its lifeless tenant before you, either for unseemly invective, or scarcely less seemly panegyric. The counsel for defendants have judged otherwise; it has seemed to them wise and proper to tear aside the vail that divides the living from the dead, and to invoke the "sainted spirit" of the leader of these defendants—a phantom, gentlemen, that I know will fail in the design of frightening you from your propriety, but the invocation of which entails on me, in certain portions of my argument, the painful duty of speaking of the dead and their

deeds in terms which I would fain use only of the living. It would be unseemly to seek occasion to probe the deeds and motives of those who are no longer of this world, but it would be criminal weakness to shrink from the task when duty demands its performance.

Much, far too much, has been said to you, gentlemen, about excitement. However pleasing and eloquent all this may have been, like too many of the arguments urged upon you, they "will not bide the test." Excitement! where is it, gentlemen? Surely not here. Whom does it influence? Surely not you. Examine this "excitement," upon which such impassioned appeals have been made. What is it? Four months since, thirty or forty men, charged with atrocious crimes, were arrested and brought to our city. The crime with which they stood charged was one that touched us nearly. It had threatened to reduce our young and beauteous city to a mass of black and smouldering ashes, and to entomb in its ruins properties that were the reward of long and ceaseless toil. Charged with this fearful crime, they came among us in irons, and surrounded by every moral evidence of guilt. It was natural that, for a time, the public pulse should beat the quicker, and so it did, but there was no attempt at violence; there was no desire that the accused should meet aught but a fair and impartial trial, and almost before they were lodged in our jail, the excitement their arrival created was again hushed, and the pulse of our peaceful and law-abiding city again beat with its wonted tranquility; and as you well know, during the greater portion of this trial, but for the crowd of witnesses, the little room in which we pursued our investigations would not have been one-third full. Excitement! Among whom? Where in two hours a jury was tried and empanneled, each member of it a resident of this city—this hot-bed of excitement—and each member of it equally acceptable to the prosecution and the prisoners. Dangerous excitement! It is a foul, and, though I love not harsh words, a false stigma upon our city. Where could these prisoners have had a fairer trial or more indulgence extended to them? Where else in a city filled with able counsel, unengaged by the Government, would the prosecution have delayed the trial, at great sacrifice, merely that counsel might be procured for prisoners from a distance of hundreds of miles? Where before has such freedom of defense been suffered? Where before have the rules of law been waived by the prosecution, that the defense might introduce all that could be found to militate against the character of an important witness? In what other instance have counsel for defense, without check or interrup-

tion, been suffered, in an address to the jury, to comment upon testimony stricken from the case, to travel over the history of the country, and read unsworn letters as evidence? In the whole range of criminal reports no case can be found in which such liberal indulgence has been extended in aid of the defense of prisoners.

Much has been said to you about public opinion; but what have you or I to do with it? It cannot, it should not, influence us. The streets may be filled with rumors and conjectures; but we are not in the streets, and such things float past us unregarded. We are in a building, for the present at least, consecrated to the administration of justice; we are gathered at its shrine—if not a holy, a solemn one—and excitement and public opinion should both be banished from the elements that surround it. If strong public opinion exists, it is not the creation of the prosecution, and it is unjust, by implication or otherwise, to charge it upon us. If the city press, for a time, published news in connection with this trial, that it deemed important to the public, it has long ceased to do so. If this much-talked-of public opinion exists, who made it? Not the prosecution; its lips have been uniformly closed by a sense of propriety. And I would ask those who address such language to you, have the prosecuting counsel run through the streets, pledging their honors to the innocence or guilt of the prisoners? Have they sought, day after day, to raise an influence that might be brought to bear upon your deliberations? Have they sown distrust broadcast in the community, or gathered public meetings for the purpose of denouncing these judicial proceedings? Have they got up death-bed scenes to affect the imagination of women and children; for I presume they were scarcely designed to influence men? Have they published sermons of doubtful morality and perverted taste, for distribution, with reports of supervisors, comments of the press, and fancy scenes by youthful and ardent counsel annexed? Have they done aught but their duty, or done that aught but fairly? Have they passed through the streets, stating that they knew, and could wager that certain of the jury they might name, would never agree to convict? No, gentlemen, the prosecution do no such things, and "laugh to scorn" those who do. They know you; they have faith in your intelligence and integrity, and await with patience and respect the result of your judgment. They know you, and despise the childish weakness which seeks, by such shallow courses, to "turn awry" the even justice of your deliberations.

We are here to seek your verdict by no such means; we are here

to discuss testimony, and, aided by lights of past ages and the wisdom and experience of our respected judge, to separate truth from falsehood. You have heard this testimony; you have listened to it with unwearying patience; you will soon retire, "the world forgetting," though not by it forgot, with your responsibilities gathered upon yourselves, to make up your verdict according to that law which has been well styled "the perfection of human reason," and which, however eloquently it may be assailed, even by its own disciples who serve and minister at its shrine, bears, stamped upon its venerable front, the sanction of ages, of sages and of worlds—willing, if you can, to acquit these men; but ready, also, if your judgment and the law direct it, to find them guilty.

* * * * * * * * * * * *

Again and again, you are told that death has visited and thinned the ranks of these unfortunate men, and the corse and its shroud are seized upon as fit pictures to disturb your visions, in the hope, apparently, of making you shudder as you gaze. And because Providence has deemed it fit to remove two of these defendants, shall we be told, in deliberate argument, that you are therefrom to infer the innocence of those who are left? Is such to be the basis of a solemn verdict?

Permit me to ask you, gentlemen, what have you to do with death-bed scenes, false in fact, morbid in taste, and wholly irrelevant to this issue? You will, I am sure, entirely dismiss from your imaginations these ghostly fancies which your good sense has doubtless prevented from finding lodgment in your minds.

But the picture is a fancied scene, destitute even of the merit of simple truth. The dying words, which are now so sought to be perverted, were in fact of far different import; and were flung off from a fevered brain, amid the fearful delirium of deathly collapse, and let me say, dressed up as they now are, they would meet from the deceased, could he hear them, no sign of recognition—naught but the smile of derision. They might serve to adorn the page of some yellow covered novel—they have served to grace two elegant perorations—but they scarcely seem appropriate in the argument of a trial of such magnitude and importance. I regret that the last delirious moments of the dead should be subject of public comment; but as counsel on the other side have thought otherwise, it is my duty to follow them with the truth, and it will be duty of the court to tell you to banish them from your minds, if perchance they linger there.

Gentlemen, you have been gravely told that "you stand between the living and the dead;" that "the slightest error in your finding

will prove a source of constant remorse;" that "the thought should make you tremble." If this indeed be true, you may well tremble. Uncertainty and imperfection are stamped upon earth, and upon man, its choicest production, and upon his proudest efforts. Feeble man talking of certainty! His loftiest fabrics crumble beneath the step of time; or are crushed or scattered before an hour's breath. His cultivated intellect, his glowing mind, lie shattered and quenched in a moment's space. No, gentlemen, no such fearful responsibility rests on you; no such unerring certainty is required of you; and he who seeks to grasp or attain such perfection, will only realize how

"Vaunting ambition doth o'erleap itself."

Neither reason, law nor sense requires from you the exercise of superhuman attributes. You are bound to exercise caution, care, and deliberation; to weigh the evidence with your best judgment; to sift it with your keenest penetration; and, having done this, to state honestly the convictions of your mind—no more and no less.

* * * * * * * *

What has been the history of the road while in the hands of the State? For years it dragged its slow length along; an encumbrance and a burthen. The State needed engines, cars, depots—every material to prosecute or sustain with energy or profit, this important work; but its credit was gone, and it was immersed in debt. Our population was thinly scattered across the entire breadth of the Peninsula. Engines dragged slowly and heavily through the dense forests. Our city numbered but 12,000 people; our State was destitute of wealth; our farmers destitute of markets; our laborers destitute of employment; and so far as the interests of the State and her people were identified with the railroad, it presented a joyless present, a dark and frowning future.

In a fortunate hour, the State sold the road, and the millions of this denounced company were flung broadcast through our community; they took up the old track, relaid a better one, extended the road to the extreme line of the State, laid down at enormous cost, over 400 miles of fences to guard the property of all, save those who wanted a beef market at each crossing; multiplied the accommodation seven-fold, quadrupled the speed, increased traffic and commerce, so that while, in 1845, the State passed 26,000 tons over the road; in 1850 the company passed 134,000 tons; created markets for our products, snatched the tide of passing emigration from the hands of a steamboat monopoly, hostile to Michigan, and threw it into the heart of our State, until now, where heaven's

light was once shut out by dense forests, it shines over fertile fields, and rich, luxuriant harvests, and the rivers of our State, which once ran with wasteful speed to the bosom of the lakes, turns the machinery which renders our rich products available. With them, Capital made its home amongst us; our credit was restored; hope and energy sprung from their lethargic sleep; labor clapped her glad hands and shouted for joy; and Michigan bent for the moment, like a sapling by the fierceness of a passing tempest, relieved from the debts and burthens, rose erect, and in her youthful strength, stood proudly up among her sister States.

Who shall stop this glorious work, which is spreading blessings and prosperity around us. Who shall dare to say, "thus far shalt thou go and no farther?" Who shall dictate to it after doing so much? Must it now pause and rest in inglorious ease? No, gentlemen, it shall not be stayed; it shall speed onward in triumph, it shall add link after link to the great chain that binds mankind together; it *shall* speed onward, still onward, through the gorges of the mountain, over the depths of the valley, till the iron horse, whose bowels are fire, "out of whose nostrils goeth forth smoke," and "whose breath kindleth coals," shall be heard thundering through the echoing solitudes of the Rocky Mountains, startling the lone Indian from his wild retreat, and ere long reaching the golden shores of the far-off Pacific, there to be welcomed by the glad shouts of American freemen at the glorious event which has conquered time and distance, and bound them by nearer chords to older homes and sister States.

A detestable monopoly! These railroads, built by united energies and capital, are the great instruments in the hand of God to hasten onward the glorious mission of religion and civilization. Already is our Central Road stretching forth its hands, and giving assurance that soon shall its iron track reach across the neighboring Provinces from Detroit to Niagara; and that ere long the scream of the locomotive shall be heard over the sound of the cataract, which shall thunder forth in deafening peals, that glorious event. Our brethren on the shores of the Atlantic, with whom we are bound by every interest, association and affection, will hail the shortened tie with ardent welcome.

Beneath the beneficial influence of companies like this, space is annihilated, weeks are reduced to the compass of days, and in spite of the wicked purposes of bad men, this and kindred companies shall continue to spread and contribute to the greatness and prosperity of our country, until the earth vibrates with the pulses of her glory. * * * * * * *

What! are we, in this law-abiding and loyal State, to have it thundered in the ears of jurors, in the sanctity of a court house, and in the course of judicial proceedings, from the lips of any man, that if a verdict is not satisfactory to the people, another "inquisition will be holden, and the victims of the law be dragged from the bloody fingers of power?" Do I overstate it? No, I know you recollect it. I saw and felt, and sympathized with you, in the shudder which marked your feelings as that and kindred sentences fell upon your astonished ears. I forgot I was here, and was carried for a moment to some heated tribune of Paris, where some spirit of fierceness was maddening the populace and stirring up France to again

"Get drunk with blood to vomit crime."

Ah! gentlemen, there is a worse evil abroad through this land, than the overshadowing power of corporations. There are *isms* of dreadful and fearful import around us. They "menace our public institutions and private rights." There is a spirit of disloyalty to law and country; a tendency to forsake the old land marks; to treat the lessons of sages which come down from our fathers, as antiquated and worn out; to speak lightly of our hallowed Union; to abandon those pure, steadfast and perpetual principles which have sanctified our past, and which can alone save our future; and to rear and plant in *their* stead a "*higher law*," which each one for himself may adjudge and administer.

Hence come those frightful dangers which disturb our courts; that voice of evil omen which would fain chaunt the hymn of ruin over the broken fragments of our capitol; which would raise the arm of private judgment against the enactment of the law-makers; and rouse an excited populace to sit in judgment on the decisions of courts and the verdicts of juries.

Gentlemen, it is an evil day, when the men of our high places are found scattering such seed in congenial soil. Where, if such is to be the course of things, are we to stop? There would be an end of law, and confusion and ruin would stalk with fearful strides over our land. We enforce not the law here by the bayonet. It is the law of the people, administered by forms prescribed; and the beautiful sight is exhibited of the people of a whole empire bowing in silent respect and cheerful obedience to the adjudications of their own courts and the verdicts of their own juries. And well may we do so. For what would we be without that law and cheerful obedience to it? What and where would we be if a community, or any portion of it, could or dare rise up, in

violence or lawlessness, and crush or disturb the solemn awards of legal tribunals? What and how shall we characterize the spirit which would invite us to such a dread feast?

Gentlemen, all you possess on earth is the reward of labor protected by law. It is law alone which keeps all things in order, guards the sleep of infancy, the energy of manhood, and the weakness of age. It hovers over us by day; it keeps watch and ward over the slumbers of the night; it goes with us over the land, and guides and guards us through the trackless paths of the mighty waters. The high and the low, each are within its view, and beneath its ample folds. It protects beauty and virtue, punishes crime and wickedness, and vindicates right. Honor and life, and liberty, and property, the wide world over, are its high objects. Stern, yet kind; pure, yet pitying; steadfast, immutable and just; it is the attribute of God on earth. It proceeds from His bosom, and encircles the world with its care and power and blessings. All honor and praise to those who administer it in purity, and who reverence its high behests.

When our own respected, eloquent and classic citizen senator, was desired to choose a motto and design for the coat of arms of that State, with which he is so identified, and by it so appreciated, most happy was he in that choice. We find it stamped, and reading, when rendered, thus: "If you seek a beautiful peninsula, look around you." And we see, as part of the design, the sun of civilization rising from the waters, and commerce and agriculture quickening into life beneath its genial rays. And the lone Indian is there too, standing in sadness, seeing the elements advancing and gathering, which tell him the doom of his race, and before which he must again retreat to roam the western wilds.

And a beautiful peninsula it is! Its shores bathed and almost circled by the majestic lakes which now are convulsed with storm, and anon flash back the serene light of heaven, as if from a million of mirrors. Its prairies blooming with beauty, and uttering sweet whisperings to the light wind as it breathes among its flowers; its fields yellow with luxuriant harvests; its youth cultivated; its people moral, contented and happy; and all reposing beneath the reign of law and order. But change the scene! Let law be disregarded, and her ministers brought to contempt; let confusion and disobedience characterize her people, and the clouds of darkness and disgrace will soon gather over our land. Frantic passion will produce ruthless violence; bad men will revel and rejoice; the good will sigh and depart. Better, than that this should come to pass, would it be that the forest and primeval silence should return again. But

it is useless to anticipate such evil things. Such invocations to our people, fall on unwelcoming ears. They may suit some foreign district, some land where anti-rent and anti-law make part of her history; but cannot and will not corrupt the law-loving and law-respecting people of Michigan. He who expects to read, on the columns of her greatness, words of disloyalty to the Union or disrespect to law, may seek for them in vain, until he himself sinks into the abyss of time.

I regret, gentlemen, to have thus to leave the strict merits of the case, to follow and comment on the extraneous, and, to my judgment, most dangerous, remarks of counsel, and will now return to what is more in point.

* * * * * * * *

Gentlemen, I feel the solemnity and importance of the place and the hour. The long months which we have been in this Court House, are dwindled down to a span. A narrow space intervenes between us and the long looked for end. I need not say how important it is for these prisoners—solitude or society, liberty or bondage tremble within the fleeting moments, and it makes me sad to feel and believe, as I do, that the dark shadows of the prison house are already gathering around them. But, gentlemen, there is an importance beyond the fate of these prisoners and the limits of this court room. This cause has spread through the confines of our State and beyond its limits, and a world is looking on to see if there is here strength and virtue sufficient to assert the integrity of the law.

The dignity, the honor and the character of Michigan are in your keeping. I feel proud and secure in knowing them there. I feel assured that, when the future historian makes out the record of our past, and the pencil of truth writes down the dark details of lawless violence and banded crime, which stain our annals and blacken our fame, there shall be written beneath it in living light, these words which will illuminate the darkness and remove the stigma: "A firm and able judge, an intelligent and honest jury, unawed by fear and prejudice, and unawed by threats, vindicated the violated law."

We are called upon by every high consideration which can induce action, to do our duty in this case. Gratitude for the lovely heritage God has given us; patriotism; love for the beautiful peninsula, in which is fixed our destiny and centered our all of earthly good and hope; the desire we have for her future prosperity and illustrious career, all unite in one voice, and ask that you be firm, free and steadfast on this occasion. For, if these dangerous doctrines

which produce the outrages we are considering, are to be spread from the hamlets of Leoni throughout the breadth of the land, and even to the jury box of our courts; if men, animated by deep hate against a corporation, feel and think that they are justified in redressing their own real or fancied wrongs in their own way; if courts are to be scouted at, law trampled on, order rushed into wild confusion, and crime sympathized with and left to stalk unpunished, then, indeed, have evil days come upon us. Capital, virtue, peace and property will be trodden over and crushed by mob violence, and all the dire evils which will follow in its train.

The first jury which renders a verdict, tainted by the unhallowed spirit of fear or public opinion, or prejudiced by loud clamors against monopolies and tyrannical corporations, will have stricken a death blow at their country's honor and welfare. The first juryman who renders his verdict, in the midst of turmoil, excitement and prejudice, unmoved by all such elements, with his conscience impressed by his oath, with his mind calmly, but deeply, imbued with the truth and regulated by the law, presents a moral spectacle to be admired, honored, and forever remembered—his action adds to the security of the commonwealth and gives new guaranty of its perpetuation.

Gentlemen, I do not intimate that there is any great volume of prejudice or passion arrayed against the Michigan Central Railroad Company. I believe that the mass of our citizens regard it as a public benefit, a mighty source of unnumbered blessings to Michigan, and its superintendents and managers as liberal, just and honest. Be this as it may, I do know that Michigan is loyal to the Union and the laws. May she remain so forever! I would fain carve the sentiment on the columns of her Capitol; I would stamp it on her broad banner; I would wave it aloft, that her law-loving and law-abiding people might gaze on it with pride and pleasure, knowing and feeling that they, and all they have or cherish, will ever find security, peace and happiness, beneath its ample folds.

So may it be, and if so, we will soon find the State of our pride leaping on to greatness like a young giant, glowing all over with honor, vigor and prosperity, till she becomes lustrous as the starlit sky.

But, gentlemen, fraught with importance, as I deem this case to be to the character and welfare of Michigan, still we wish no verdict at the unjust condemnation of a single citizen. Whatever your verdict may be, this prosecution and a good community will, and must, be satisfied with it. All we required was a fair, impartial trial; that has been obtained, and whatever be the result, we

will never murmur against it. We know the care and anxiety it has cost you, and the inconvenience and loss it has entailed upon you. We know the consciousness you have of your weighty responsibility, and that even now you would gladly pass the cup from you. But, gentlemen, the duty of a good citizen, if well discharged, however painful in the present, becomes through all after-time an abiding source of pure pleasure.

May I, for a moment, change this scene, take you to the Capitol of your Union, and turn back the tide of time a few short months. See there before you the scene of a patriot soldier's death bed! His life has been spent in the service of his country. His honor, like his own good sword, is without a stain. He once was exposed to the perils of this northwestern frontier. He braved danger and death amid the everglades of Florida. On the terrible fields of Mexico he bore aloft the glorious flag of our Union, graced it with new triumph, and "planted fresh stars of glory there!" The voice of a grateful nation called him to the high place of our country; but here for him is the end of life. He has fought his last battle; he yields to the victor, Death; his eye, once gleaming through the smoke of battles, is dim; his voice, once heard like the bugle over the clash and shouts of a deadly strife, can only whisper; and his brave heart, which never beat with fear, is flickering in its last pulsations. What do we hear now? What memories of brave deeds now come back to light up the gloom of the dark hour? What rays of earthly glory now shed their radiance to cheer the dying hero through his last struggle? Alas! illustrious though his deeds, bright though his fame, all, all seem quite forgotten; but there does come whispering to his sinking spirit a kindly thought and a sweet solace, and you hear it falling tremulous from his lips: "I have endeavored to do my duty."

Gentlemen, may we endeavor to do our duty in this case, and through life, and be consoled by the reflection thereof in death.

And now, though through with all I have to say, though happy to feel that I need no longer detain you, I yet linger ere taking my seat.

We have come together so often; we have associated in this cause so long; we have participated in our several capacities for so many months in all the excitements and incidents of this trial; the kindly greetings of recurring morns, the familiar faces, the pleasant intercourse, all have flung remembrances over the past which now, at the moment of parting, cluster so fresh and warm around us, that I hesitate to end them.

I would fain say a word of kindness to all engaged in this cause,

but it may not be appropriate to speak individually of each. I feel I may, however, with propriety allude to the prosecuting attorney of this county, who, before you and the people he represents, has discharged his trying duties with an impartiality, ability and fidelity which has gained for him an enviable name.

And now for yourselves allow me to say, I cannot by words show my high appreciation of you and your services. I can only thank you warmly and truly. May long life and every prosperity repay you for your cares and sacrifices in this cause, and when the summons comes for you to appear before the High Tribunal of another world, may each one of you with a conscious sense of duty well discharged,

> ——"Sustained and soothed
> By an unfaltering trust, approach thy grave,
> Like one who wraps the drapery of his couch
> About him, and lies down to pleasant dreams."

[Hon. JACOB M. HOWARD (since deceased), made a powerful and eloquent opening argument to the jury, but failed to preserve the notes, and it is lost so far as any record is known. Of his wonderful power with a jury, too much could not be said. His methods as an orator are aptly described by the words of Attorney-General May and Chief Justice Campbell, at his death in April, 1871. Mr. May said:

"The name of Jacob M. Howard is a household word in Michigan. There is no man here so poor or so ignorant who is not familiar with that name. During all its years of existence he has been one of its strong pillars of support, and has left the impression of his great mind upon its wonderful growth and prosperity. He grew up into a perfect manhood within its borders, and has been closely identified with every interest tending toward its development.

"He was a man of mark. The stranger stopped and looked at him, and instinctively received the impression that he was in the presence of a man of great physical and mental power. He was a true man—true to his clients, true to his convictions, true to all the great and varied interests committed to his care by an intelligent and confiding constituency. He was true to his country when armed treason sought its life; and he loved his country and its institutions with a zeal that amounted to a passion. He united the simplicity of a child with the strength of a lion. The constitution of his mind was such that he loved truth, right and justice for their own sakes, and loathed and spurned deception and fraud with a strength rarely equalled.

"Amid all the rancor and hate engendered by partizan strife during the past few years, no man could honestly charge Mr. Howard with dishonesty. However much his great powers enriched others, *he died poor.* With advantages for gain possessed by few, commencing the practice of law nearly forty years ago, and

acknowledged to be a leader in the profession, *he died poor.* Proud words these to adorn the monument of a statesman! No man could desire a more fitting epitaph. They speak volumes for his honesty, and indicate that whoever else worshipped mammon and enriched themselves at the expense of the government, Jacob M. Howard always kept strictly within the golden rule. Indeed, like Webster, whom he strongly resembled, he cared quite too little for gold and silver and the accumulation of wealth. He worshipped at no such shrine. With a strong mind and sound body early trained to severe discipline, and enriched by ancient and modern learning, united with a fine presence and a wonderful command of pure English, few men were his equals at the bar, in the forum, or on the hustings. His death is a great public loss, and will be mourned by thousands throughout the length and breadth of this continent, and by none more sincerely than by the recently enfranchised race whose earnest and eloquent friend he lived and died."

Judge Campbell said:

"Mr. Howard's style of legal eloquence was very remarkable. He never appeared in a court of justice except with great gravity of demeanor; not one that was put on for the occasion, but one that was natural to a man who felt impressed with the feeling that he was a minister of justice. His diction was of that lofty kind that, applied to lesser subjects, would have been inappropriate, and applied by lesser men, would have had very little effect. But when behind his ponderous language was his ponderous intellect, and when every word that he said had its meaning, and every idea came out with all the force that language could give, then those rounded periods had something of magic in them, and there was as much gained, perhaps, by that manner of his as could be by any aid of rhetoric that could ever have been devised. * * * Mr. Howard was, I think, the best specimen of the natural production of American institutions in their best form that we had amongst us. He was peculiarly American. While he possessed plainness, and while he despised all those things that are despicable, he had a most hearty admiration for everything that could really illustrate and embellish life. As a scholar, I know no one whose reading was more extensive and select; there was no branch that he despised or neglected. * * * He was a man who represented better than any man I have ever known in this community, and somewhat as the lamented Mr. Lincoln did, the great popular common sense of the people. He was remarkable for reflecting that you could almost always be sure that, as an ordinary matter struck Mr. Howard, so it struck the average sense of the community; at least when passion was over, and when the time for sober reflection had come; and in this way finding in his own heart a reflection of those emotions and feelings that actuated the great mass of mankind, we can find that peculiar trait of his character—one very great for his success. When he spoke to a jury, he knew how everything would strike that jury; when he addressed the court, if that court possessed ordinary qualifications and common sense, he knew how those ideas would strike the court, and that they

would understand them. When he addressed the Senate or the larger audiences of the people of the United States, in like manner he knew that what he said would go right home to their hearts, and that they, at all events, would appreciate and understand him, whether they did or did not agree with him in that which he was seeking to bring about. And I think myself that when Time has made his memory a thing of the past—when his fame has become the property of future generations, although he may be remembered as a great man; although he may be remembered for his learning, for his eloquence, and for the qualities that have struck most admiration into the great mass of mankind, he will be still further venerated and remembered as a representative American, who valued above all other things the great and essential principles of mankind."

THE TRIAL OF DANIEL E. SICKLES.

Indicted for the Murder of Key.

Held at Washington, February, 1859.

This is one of the leading insanity cases in America. It comprises some of the most exciting scenes, distinguished parties, counsel and witnesses, in the whole line of insanity defenses.

Major General Sickles, now a retired army officer, politician and celebrated lawyer of New York, was congressman, on duty as such at the time of the homicide. He had filled many places of profit and trust, was married to a very beautiful woman, and lived at the Capital. He has been minister to Spain, and was a society gentleman of high rank and standing in Washington.

District Attorney Key, whose father was author of "The Star Spangled Banner," was a person of accomplished manners, a friend of General Sickles and wife, and intimate with the family. General Sickles had aided his professional advancement in various ways.

The dreadful secret came by the confession of Mrs. Sickles, after being detected in giving signals to Key on the fatal Sunday, when General Sickles shot the seducer dead in broad daylight, and gave himself up to imprisonment.

The defense was emotional insanity. The counsel employed in the case were Messrs. Jas T. Brady, Graham, Stanton, Phelps, and

others—as grand an array of legal talent as ever assembled on the continent. The efforts of these leaders of the bar would make a readable volume; but the object is to select such portions of the facts and arguments as will describe the trial. Extracts of Secretary Stanton's address are aptly quoted in the trial of McFarland, in this volume.

Few cases ever attracted more attention, and seldom has a case been more ably conducted. Such passages as, "You all know too well the value men put upon the marriage bed!" "Trouble is a mysterious visitor," "Prosperity is the parent of friends; bad fortune the fire by which they are tried," occur often. Mr. Graham's opening periods are selections of wisdom, culled from holy writ, ancient classics, and the inspired utterances of great men. To read them is to know what such men say of home and honor.

In this trial no summing up was made. The case was submitted on the charge of the court, with brief arguments on requests to charge. It is remarkable that men so learned and eminent as Messrs. Beach, Brady, Stanton and Graham should thus submit an important case. Such a hazard is not often attempted; but the result proved their wisdom. "Remorseless Revenge" was the theory of the prosecution. The remarks of Mr. Brady and Mr. Stanton were carefully kept by Mr. Graham, and used in his speech in the McFarland case, where they are reported.

[The writer remembers an instance of Secretary Stanton's art as an advocate that may well be mentioned in this connection. It was a trial of a young man charged with stabbing his rival in the heart, near Cleveland, some years before the war. Mr. Stanton, then in the prime of his legal practice, was pitted against the eloquent advocate, John A. Bingham, afterwards a fellow statesman. Mr. Stanton kept his seat, in busy but quiet preparation, for a final plea. The prosecuting attorney was young and weak. Mr. Bingham was expected, and was prepared, to close. Indignation ran high against the prisoner. The cool, quiet manners and mysterious self-possession of Stanton never deserted him. He read between the lines, that his closing would rouse Counselor Bingham, who would stir the jury into such a fury of excitement, that hanging would be called for, and no mercy. As the district attorney closed, saying, his "able and distinguished associate would conclude after Mr. Stanton," and, warning the jury against Mr. Stanton's power, he took his seat. The silence grew painful. "Proceed, Mr. Stanton," said the court. "I have no remarks to add, your honor," was the reply. John A. Bingham was white with rage. He tore his notes in

shreds, muttering, "Stanton's trick! I might have known it." It was a clear case of "dropping" on counsel, and a most effective speech. The jury and spectators were dumb with disappointment. The defendant was found guilty of manslaughter, and sentenced for a moderate period—his life saved by *the skill of his counsel.* Secretary Stanton earned and accepted his $1,000 retainer with composure. He had not uttered a word for his client, and yet made an eloquent argument by his silence. Silence, even in a lawsuit, is sometimes golden.]

Hon. John Graham.

For more than a score of years Mr. Graham has been a leading advocate in New York, and met with deserved success in many famous murder cases.

Mr. Graham is near sixty years of age and will soon retire from practice. Personally he is of strong build, medium height, with a warm face, an impassioned manner, a man of large resources in law, familiar with the Bible and human nature. He carries a jury by the force of his powerful illustrations and deep earnestness.

He begins by a judicious selection of his jury, and ends with an affecting appeal. He speaks at great length, reads long extracts, quotes extensively from various cases, especially able advocates in similar cases; reading whole chapters in the middle of his address, and carefully commenting on the force and reason of other men's positions. He is not selfish, but generous, and gives due credit to all his authors. In this way he seems always to be telling of something of others rather than of the case at bar; yet always with an eye single to his client's interest. The whole argument sounds like a story, in short, and never tedious, chapters. By his copious extracts from Scripture, his force of expression, his power of rendering words effective, he adds a sacredness to his theme akin to the most brilliant passages of Burke. His strong points are ever before the jury; now in sarcasm, now in irony, then in pathos and often in startling sentences that make one shudder at the deed he denounces.

The attention of his hearers never lags. The attendance at his speaking is limited to the capacity of the court room. With a thrilling exordium he passes to a solid structure of reasons, built up in circles so strongly coiled together as to end in a cable cord that binds a jury to his conclusions. There are times while he is speaking, that to think of any other than his conclusions would be to disbelieve the decision of courts, the sacredness of Scripture, the wisdom of judges, or the humanity of man.

Mr. John Graham's Argument.

May it please the Court:

Gentlemen of the Jury—This is to me a time for solemn thoughts, and I rise to address you laboring under a severe struggle of feeling. It is a beautiful sentiment, better expressed in the Latin, than in the translation, *amicos res opimæ pariunt; adversæ probant.* Prosperity is the parent of friends; bad fortune is the fire in which they are tried. Friendship is the most sacred of all artificial, as distinguished from our natural, attachments. It stands next to those which by the hand of Nature have been interwoven with the objects which she herself creates. Upon the altar of this relation I cast my present offering. It carries with it the unction of a warm heart. May it prove to be an efficacious tribute in favor of my client! I have been the companion of his sunshine, and I am now called here to participate in the gloom of his present affliction.

Trouble is a mysterious visitor. It seems to be the unshunnable doom of man. It has been well said that, "Although affliction cometh not forth of the dust, neither doth trouble spring out of the ground: yet, man is born unto trouble, as the sparks fly upward." That same great influence which has impressed laws upon all the departments of creation—which has studded the heavens with their fires, and ordained the boundary line between the day and the night—that same great influence which stretches over the face of Nature verdure's green mantle, and again supplants it for the less pleasing dress of winter—that same great influence which has designated the time for the dropping of the leaves and the falling of the sparrows—is the will that guides, and the hand that holds the rod, with which, in this life, we are punished. As we pass from the proceedings in which we are here engaged, may we be permitted to repeat over their result (which I confidently anticipate), as a congratulation to this defendant for the severe ordeal through which he has passed: "Behold, happy is the man whom God correcteth: therefore despise not thou the chastening of the Almighty: for He maketh sore, and bindeth up: He woundeth, and His hands make whole. He shall deliver thee in six troubles: yea, in seven there shall no evil touch thee."

A few weeks since, the body of a human being was found in the throes of death, in one of the streets of your city. It proved to be the body of a confirmed—an habitual adulterer. On a day too sacred to be profaned by worldly toil—on a day on which he was forbidden to moisten his brow with the sweat of honest labor—on

a day on which he should have risen above the grossness of his nature, and though on no other day he had sent his aspirations heavenward, he should have allowed them then to pass in that direction—we find him besieging with the most evil intentions that castle where, for their security and repose, the law had placed the wife and child of his neighbor. Had he observed the solemn precept, "Remember the Sabbath day, to keep it holy," he might at this moment have been one of the living. The injured husband and father rushes upon him in the moment of his guilt, and, under the influence of phrensy, executes upon him a judgment which was as just as it was summary.

The issue which you are to decide here is, whether this act renders its author amenable to the laws of the land. In the decision of this issue, gentlemen of the jury, you have a deep and solemn interest. You are here to fix the price of the marriage bed. You are here to say in what estimation that sacred couch is held by an honest and an intelligent American jury. You are favored citizens. You live in the city which constitutes the seat of our Federal government; a city consecrated to liberty above all others, but not to the liberty of the libertine; a city bearing the name of the illustrious Washington, the "Father of his Country," of whom it has been emphatically and truly said, that he was "first in war, first in peace, and first in the hearts of his countrymen." You may feel a pity, in reviewing this occurrence, for the life which has been taken; you may regret the necessity which constrained that event; but, while you pity the dead, remember, also, that you should extend commiseration to the living. That life, taken away as it was, may prove to be your and my gain. You know not how soon the wife and daughter of some one of you would have been—nay, you know not but what she had already been—marked by the same eyes which doomed and destroyed the marriage relations of this defendant. You know not how soon the gardens of loveliness over which you now preside, had that life been spared, would have been called upon, by the deceased, to supply *their* flower, wherewith to gratify his wicked, yet insatiable appetite.

An interference with the marriage relation must strike every reflecting mind as the greatest wrong that can be committed upon a human being. It has been well said that affliction, shame, poverty, captivity, are preferable; and I do not know that I can express the sentiment more happily than in reciting the lines which the great dramatist has placed in the mouth of the Moor, over the supposed discovery of the inconstancy of his Desdemona:

"Had it pleas'd Heaven
To try me with affliction; had he rain'd
All kinds of sores and shames on my bare head;
Steeped me in poverty to the very lips;
Given to captivity me and my utmost hopes;
I should have found in some part of my soul
A drop of patience: but, alas! to make me
A fixed figure for the hand of scorn
To point his slow, unmoving finger at,
Oh! Oh!
Yet I could bear that, too; well, very well.
But there, where I have garnered up my heart,
Where either I must live or bear no life;
The fountain from the which my current runs,
Or else dries up: to be discarded thence.
Or keep it as a cistern, for foul toads
To knot and gender in!—turn thy complexion there
Patience, thou young and rose-lipped cherubim;
Aye, there look grim as hell."

You are here to decide whether the defender of the marriage bed is a murderer—whether he is to be put on the same footing with the first murderer, and is to be presented in his moral and legal aspects with the same hues of aggravation about him.

Gentlemen, the murderer is a most detestable character. Far be it from me to defend him before this or any other jury. Society cannot, it ought not, to contain him. Calm, cold, and calculating, he saves his malice as the miser saves his treasure. His bosom is the vault in which he deposits it. Age possesses no claim upon his consideration—nor does sex interfere with him in the execution of his bloody purpose. In the very air he sees his weapon, and it marshals him "the way that he was going." He selects some object of innocence for his victim, and chooses some lonely spot for the perpetration of his horrid deed. In the drapery of the Night he wraps himself—and at that hour when

"O'er the one half world
Nature seems dead, and wicked dreams abuse
The curtain'd sleeper,"

he steals forth to the accomplishment of his bloody design. Afraid of his own movements, he is compelled to address the very Earth itself in the language of supplication—and entreat it to

"Hear not his steps, which way they walk, for fear
The very stones prate of his whereabout."

Another feature of the case to be borne in mind by the jury is this: the extraordinary character of the opening of the learned counsel for the Government. It was an able, it was an eloquent production. It reflected credit upon the mind from which it emanated, for it was stamped with a high order of ability; but it will be for you, gentlemen, to say, when you pass that opening in

review before your minds, whether or not it was warranted by the humanity that should ever attach itself to his position. You will remember the extraordinary expressions of the "prisoner coming to this carnival of blood," of his being "a walking magazine," of his "adding mutilation to murder," of his "standing bravely over his victim," as though with dagger drawn ready to plunge it in his bosom. Gentlemen, you would have thought, from his opening, that the learned counsel for the Government was describing a case of the most deliberate homicide—and yet the case he was describing was the case of a man who, while acting from a sense, and under the influence of a sense, of right, was nevertheless, no doubt, at that particular juncture entirely bereft of his reason. At the time he alluded to the magazine, which he described as being in the possession of the defendant, did it occur to the learned counsel for the prosecution to describe also the weapons that were in the possession of the adulterer? For with his opera-glass and white handkerchief he was capable of carrying death just as certainly to the domicil of the defendant, as the weapons with which this defendant was provided, were capable of carrying death to him. The sight of that opera-glass, and those other appliances with which the deceased was furnished, in the prosecution of his unhallowed purposes, were just as certain death to the happiness and hopes of the defendant, as though the pistol of that adulterer had been presented at his breast.

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Gentlemen of the jury, I ask you this: Why is it that this prosecution is thus technically managed? Is there anything behind, which, if it escaped, would satisfy this jury that this is an unhallowed prosecution? I do not mean by this to impeach the integrity of the authorities in any way; I use the word unhallowed rather in the sense that it ought not to succeed through the instrumentality of an intelligent jury. Is there anything in this prosecution which requires that the case should be tried in the way in which it has been tried; that from this jury all but property-holders should be excluded; that in the opening address of the learned counsel for the Government the occurrence should be presented under a hue which the facts do not impart to it; that strong extra counsel should be employed in order to sustain the prosecution; and that witnesses should be examined in a particular form so as to exclude from the ears of this jury, *that fact* which, when it becomes a part of this case, must incline the scale in favor of the defendant? It will be for you, under all the circumstances as

I have presented them to you, to account for these extraordinary features in this prosecution.

In relation to your province, gentlemen of the jury, as I understand it, the court has invested you with the largest powers. I have read several of the charges of the learned judge upon the bench to juries, and I find that he is imbued with a spirit which has been only exemplified in an equal degree in one instance, to my knowledge, by any other jurist, and that is by the great Chancellor Kent. The greatest champion that juries ever had in this country was probably that great and now deceased jurist; and the same spirit which seems to have entered into the instructions and judgments of that learned jurist, with reference to the rights of juries, appears to influence the learned judge upon the bench in relation to your province. As I understand the law of this court, every fact is to be passed upon by the jury—not only the facts entering into the occurrence, which is charged as a crime, but the state of mind—the intention—the motives—that impalpable influence, if there was such an influence—which set on the defendant to the commission of the act, for which he is now arraigned as a criminal before you. So far as the definition of offenses is concerned in this case, resort is to be had to the common law of England; and the trial by jury, in this district, is to be according to the course of that same common law, except as modified by the genius of our institutions, or as changed by the Constitution and laws of the United States, or the law of the State of Maryland, as continued over this district by Federal legislation. As to the crimes claimed to be involved in this proceeding, let me first ask your attention to the definition of "murder," as given in 4th Blackstone's Commentaries, page 195, a book of the highest authority, and the law, as here laid down, is to control you in the discharge of your present duty. Blackstone, borrowing his definition from Coke, thus defines murder:

"When a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the king's peace with malice aforethought, either express or implied."

We have no king, and therefore, to carry out this definition, we must substitute in place of "the king's peace," "the peace of the People of the United States."

I shall, in another branch of the case, consider this question, whether at the time of the death of the deceased, he was in the peace of the People of this great government, whether the adulterer, when he goes forth upon his mission, does not cease to be in the peace of the community, and whether he is not making direct war upon those great fundamental principles upon which not only

the institution of marriage itself rests, but upon which our social fabric is founded.

The definition of manslaughter is given on page 191 of the same book. It is there thus defined :

"The unlawful killing of another, without malice either express or implied, which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act."

The difference between murder and manslaughter (as was stated by the learned counsel for the Government), is this : the one is supposed to be committed in cold blood as the result of premeditation, and the other is supposed to be committed in a state of heat resulting from passion, but resulting from passion which ought to be controlled, but is not controlled ; for passion which cannot be controlled is not passion which places any man within the pale of criminal accountability.

In this connection let me also ask the attention of the court and jury to Foster's Crown Law, page 290, which, although it is an old treatise, nevertheless is one of the purest and most reliable oracles from which legal knowledge can be gained. This author says, speaking of manslaughter :

"I now proceed to that species of felonious homicide, which we call manslaughter, which, as I before observed, *the benignity of our law, as it standeth at present, imputeth to human infirmity ;* to infirmity which, though in the eye of the law criminal, yet is considered as incident to the frailty of the human frame."

I refer, also, to pages 256 and 257 of the same treatise, for a definition of malice. This point is important, for the great question to be solved by the jury in this case is, What was the state of the defendant's mind at the time he slew the man who had contaminated the purity of his wife ?

That is the cardinal question here. The counsel for the defense noticed, on the first day on which the witnesses for the Government gave their evidence, that some of the jurors took notes of the testimony given as to the *mode* or *circumstances* of the killing; but as we understand or look upon this case, it is perfectly immaterial how death was inflicted; whether it was the result of one shot or of thirty shots; whether the man who was killed stood up or lay down. The inquiry upon this part of the case, at least, is, what was the influence of the provocation *he* gave, upon the mind of the man who slew him; what was the condition of the mind of the defendant at the time he killed the deceased.

If the transaction was presided over by a mind perfectly self-possessed, that may constitute a different question, although, in

some of the aspects in which I shall hereafter present this case, even that would not be conclusive in establishing that there was any criminality on the part of the defendant. But assuming, for the sake of the argument, that, under other circumstances, the act of slaying would be a crime, then the inquiry is, What was the condition of the mind of the defendant at the time of the perpetration of his act?

Serjeant Foster says that the term malice, in this instance, signifieth—

"That the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit."

Do you mean to tell me that the ordinary symptoms of a wicked, depraved, malignant spirit attend the act of the husband who slays the man who has polluted his wife? What distinction, then, do you draw between the case of a man who slays in order to commit a crime and that of the man who slays in order to prevent the commission of a crime? Unless, gentlemen of the jury, you are prepared to find that the act of the husband who vindicates his marriage bed, by slaying the man who dares to defile it, is symptomatic of a "wicked, depraved and malignant spirit," there would seem to be an end of the case, upon this branch of it.

But to proceed with our author: After saying that malice, in reference to the crime of murder, is not to be understood in the restrained sense of "a principle of malevolence to particulars," he proceeds:

"For the law, by the term malice, in this instance, meaneth that that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit."

"In the case of an appeal of death, which was anciently the ordinary method of prosecution, the term malice is not, as I remember, made use of as descriptive of the offense of murder in contradiction to simple felonious homicide. The precedents charge that the fact was done *nequiter* (wantonly, craftily), *et in felonia* (feloniously), which fully taketh in the legal sense of the word malice. The words *per malitiam* (by malice) and *malitiose* (maliciously), our oldest writers do indeed frequently use in some other cases; and they constantly mean an action flowing from *wicked and corrupt motive*—a think done *malo animo* (with a bad or depraved mind), *mala conscientia* (a wicked heart or conscience), as they express themselves."

The same author further says:

"The legislature hath likewise frequently used the terms 'malice' and 'maliciously' in the same general sense, as denoting a *wicked, perverse* and *incorrigible* disposition."

Again—on the same page:

"The *malus animus* (the evil or wicked mind) which is to be collected from all circumstances, and of which, as I before said, the court, and not the jury, is to judge [which was the law when this author wrote], is what bringeth the offense within the denomination of willful, malicious murder, whatever might be the immediate motive to it; whether it be done, as the old writers express themselves, *ira* (in or from anger), *vel odio* (or hatred), *vel causâ lucri* (or for the sake of gain), or from any other wicked or *mischievous* incentive."

"And I believe most, if not all the cases which in our books are ranged under the head of '*Implied* Malice,' will, if carefully adverted to, be found to turn upon this single point, that the fact hath been attended with such circumstances as carry in them the plain indications of an heart regardless of social duty, and fatally bent upon mischief."

Contemplating this proceeding, in reference to the charge of *murder*, you behold, in these citations, gentlemen of the jury, the hideousness of the *peculiar*, the *animating* principle of that crime.

In order to constitute "malice," as that term is understood in reference to *murder*, you must find that the act, which is alleged to be *malicious*, was the result of a wicked, depraved and malignant spirit; and if you can ascribe a spirit of that mind to the act of the husband who slays in defense of his marriage bed, then I have the honor to address gentlemen differently constituted from what I supposed you to be.

I must now pass on to another subject. Having given you the definitions of murder and of manslaughter, you are required to say, in the discharge of your duty ultimately, whether this case comes within either of those definitions—whether the act of the defendant, within either of those definitions, was or is evincive of a criminal heart. If it is a crime for a husband to defend his altar, his humble family altar, and if death is to be visited upon him for defending it, then the highest honor that can be conferred upon any man is to compel him to die such a death.

Now, three things are to be noticed: first, that human laws do

not shield us in the enjoyment of all our rights; second, that a right created by divine law is perfect, though not recreated by human law; and, third, that to certain relations the divine law has attached responsibilities to execute which is not to commit a crime.

The two first considerations are properly discussed together, and, by way of enforcing them upon your minds, we insist that our legal system does not reach the case of every wrong that can befall us. There are certain wrongs which we are not protected against at all by human laws, and therefore the only law which protects us against them is that which is traced in the human bosom by the finger of God—the law of human nature; the law of human instinct. When human laws do not protect us against injury, we appeal to our instincts; we are thrown upon the law of our instincts, and have a right to defend ourselves against those wrongs. This position will be perceived, upon examination, to be well founded. There is no law in this district which says you have a right to defend yourself against attack, except the law of nature. It would be folly to pass a statute to declare that a man may defend himself against the assault of a highwayman; or if a statute were passed on a subject like that, it would be folly to say that, before the statute was passed, you had not the right of defense. Self-preservation is nature's great law, and it overrides all other laws. Two men are floating on a plank, and it is necessary that one should be drowned in order that the other may be saved. It is not murder in the person who, to save his own life, drowns the other, when two persons are so situated, because the law considers that all social regulations must yield to those great principles which are implanted in us, and are a part of us as we came from the hands of the great Creator.

Sergeant Foster, at page 273 of his Treatise, says:

"The right of self-defense in these cases (alluding to the cases in which the right can be availed of), is founded in the law of nature, and is not, nor can be, superseded by any law of society. For before civil societies were formed, one may conceive of such a state of things, though it is difficult to fix the period when civil societies were formed, I say before societies were formed for mutual defense and preservation, the right of self-defense resided in individuals; it could not reside elsewhere. And since, in cases of necessity, individuals incorporated into society cannot resort for protection to the law of the society, that law, with great propriety and strict justice, considereth them as still in that instance under the protection of the law of nature."

What is the law of self-defense? Is it merely defending yourself, and allowing any person that comes along to slay your wife, or your child? Is that the law of self-defense—or is there not some relative duty cast upon you? Has the Creator made you so abominably selfish that you satisfy the demands of your nature when you defend yourselves, though you allow the partners of your bosoms, or the offspring of your loins, to be stricken down under your eyes? It is not so, as I shall presently show you; and that involves the consideration of the last of the propositions to which I have thus preliminarily directed your attention.

The authority cited proves that, to a certain extent, nature's law is our protection, and that social laws cannot supersede or divest us of that protection, and that as to all rights falling within the pale of nature's law, the great council chamber of Jehovah is the source from which the law is to come.

If, as you will shortly see, by numerous citations from Scripture, the adulterer is allowed to be slain by the law of God, and the right of a man to protect his wife against contamination is made a natural right, then, within the authority which I have read to you, it is not in the power of human laws to take away that right from those upon whom it is thus conferred. Do you mean to tell me that, when the great Being above said, "thou shalt not steal," it was not as high a crime to steal before, as it is after human legislation has said, "thou shalt not steal?" When the great Being above said, "thou shalt not kill," and "thou shalt not bear false witness against thy neighbor," those crimes were perfect. He himself pronounced those ordinances. Human laws may enforce them with additional sanctions, but do not impart them additional solemnity. The crimes would be just as great and smell as rank in the nostrils of Heaven, if human legislation should ignore the subject entirely, as if human legislatures had undertaken to embody all that is in the Decalogue in their own statutes. In this district no protection is provided against the adulterer, unless you can protect yourself against him. There is no law which furnishes that protection. What is the inevitable result? Why, that you are thrown upon the principle *se et sua defendendo*—of defending yourself and your own. Not to be so abominably selfish as to defend yourself, and let your own be taken from you—but to defend both yourself and your own. Do you not wish to be as safe against the adulterer as against the housebreaker? Has society redeemed its compact with you when it protects you from the attacks of the housebreaker by night, but permits your house, when you have left it during the day to pursue your honest toil, to be polluted by the

tread of the adulterer? One reason, then, we are bound to suppose, why society has not provided by positive legislation against the act of the adulterer, is that it considers that the natural right of a man to protect himself against that malefactor is as perfect under the Divine law as is his right to protect himself against any other violator of his natural rights. Gentlemen, there is nothing in this doctrine revolutionary or subversive of the peace and good order of society. Where society has protected us, we are not thrown upon the law of self-defense, but where society has not protected us, we are thrown upon that law. In this district there is no law which protects you against the man who would rob you of the affections of your wives, unless it is engraven upon your hearts by the hand of the Great Being who made you.

You will see more plainly the importance of this, gentlemen of the jury, when I come to construct the argument which I design addressing you from the Scriptures, as to the heinousness of the offense of the adulterer, as it is stamped upon his act by the law of God.

We may assume, then—and I state it as a proposition—that whenever a right is given by the law of God, even though not expressly recognized by human law, and the violation of that right is denounced by the moral law as an offense of aggravated hue, to defend oneself against its violation, is acting upon the principle of self-defense. The law says that no man shall enter your house at night to rob it, and that if any one does so, and you detect him in the act, that you have a right to defend yourself and your own against him, even to the extent of taking his life. If human law can give you a right to take away the life of a man when he is committing an offense which it has made an offense, why have not you the same right in reference to the Divine law, when it has declared an offense to be equally heinous with the one created by human legislation? As will presently appear, under the Divine law, it is a great deal more aggravated an offense to contaminate the wife of your neighbor than to enter his house at night for the purpose of robbing it, and if human law confer upon you the right to kill the burglar, the Divine law can impart to you the right to kill the adulterer. You will bear in mind that I am not insisting that a man has a right to kill even an adulterer, as the result of cold, deliberate thought. This is not such a case; for, unfortunately in this case, the deceased was caught, if not in the fact of adultery, at least so near the fact, as to leave not the least doubt of his guilt. The defense regard this as a very important point, and as I am about leaving it, I will state it to you again. We say

this: That if society has not protected you in the possession of your wives, it is proof conclusive that society meant that your right to their possession should remain as at nature—and that the right to protect the purity of your wives is a natural right which you can assert even to the extent of killing whoever seeks to deprive you of it, as much as you can kill for the purpose of protecting your own lives. We may assume, then, that wherever a right is given by the law of God, even though not expressly recognized by human law, and the violation of that right is denounced by the moral law as an offense of an aggravated hue, to defend oneself against its violation is an act based upon the principle of self-defense. As has been already seen, this is not a selfish principle; it extends to the protection of your own as well as to the protection of yourselves. If you can kill in defending yourself against an offense declared felony by human laws, and be blameless, why not when the Divine law makes an act against you the greatest conceivable offense? It would be an outrage upon all decency to compare a a felony created by a human law with such an offense as adultery is made by the Bible. I shall show you, by abundant citations from that sacred book, that one of the most serious offenses that can be committed against the Divine law is this crime of adultery. Human laws may enforce obedience to the Bible, by their own sanctions. They may create or multiply penalties—but do they, can they, increase or add to its moral obligation? As well might they seek to repeal its commandments, as to lend them any force by re-enacting them!

It may be said that Mr. Sickles had a civil remedy, and could have brought an action for damages. Would this have staunched his wounds? Could the purity of his wife be paid for by a few paltry dollars? Could that course afford any adequate satisfaction for the injury inflicted upon him? If an individual comes into your house, and lies upon your bed, against your will, he commits a trespass, and you can repel him by force. If an individual comes into your house, and lies with your wife, and robs her, and you, of that which cannot be restored, and for which no recompense can be made, can you not repel this invasion by force? Can your wives be used with impunity when your furniture cannot? What furniture for your homes like a wife!

This brings me to the last of the three propositions advanced in this connection, and that is, that there are certain relations to which the Divine law attaches the greatest responsibilities, and which it invests with commensurate powers. Of these, the relations of parent and child, and husband and wife, are the most hallowed—the

most cherished. It may not be the right of a brother, probably, to slay in the defense of a sister, unless he should be present at the time an offense was attempted against her person—because the attachment which connects a brother with a sister is one of love—they come from the same parents. The relation, however, which exists between parent and child, and husband and wife, is not only one of love, but of protection. For such relations, the Divine law has created the duty of protection, and the right to kill in the discharge of that duty is a proper one, and cannot be questioned by a human tribunal—at least, provided the circumstances under which the killing takes place are such as not to note that extreme malice of the heart against which social laws are designed to protect us.

It was this idea of inferiority on the part of the wife to the husband which made the act of the wife, where she killed the husband, what the common law, in olden time, denominated *parva proditio*, petit treason. High treason, at common law, was rebellion against the sovereign, insubordination toward the government—but petit treason was the insubordination of the wife to that yoke which her relations require her to wear, as it were, upon her neck. The rising of the wife against the husband was as much considered the rising of an inferior against a superior, as the rising of a subject against the sovereign; and the law, by way of characterizing the enormity of the act on her part, denominated it petit treason, in analogy to that offense which, when attempted against the government, constituted high treason. The law, in this respect, is founded upon the Divine law, for the mandate of the Bible, to wives, is, "Love your husbands, obey them, submit yourselves unto them." The husband is the protector—the master of the wife. Her sex is supposed to render her unable to protect herself, and hence it is the duty of the strong arm of the man to defend himself and his wife against the wrongs which may be inflicted upon them, either with the connivance of the wife, in which case she is to be regarded as the slave of her own frailty, or as the result of violence on the part of another.

We know that it has been said, "Frailty, thy name is woman." With all our exalted conceptions of the perfection of female character, who is not compelled to acknowledge its extreme frailty? And it is because of this inability to resist herself and others, we find it written in the revealed Word of Heaven that woman is to be placed under the protection of man. I hold it as a principle, that he who gains the affections of the wife in defiance of the authority of the husband, commits as great a crime against that husband as if by force he had taken her person. It is, therefore, the sacred

duty of the husband to look to the affections of his wife, to control them, and, above all, to see that they are not stolen from him by the insidious practices or machinations of the adulterer. He is the owner of them, and bound to secure them against the weakness of female nature. It is upon this principle and upon this obligation, the institution of marriage is created. Woman is the weaker vessel; man is the stronger vessel; and it is the duty of the man to make up for the shortcomings of the woman. In guarding the wife's honor, the husband guards his children. He owes it to them, to keep the stigma of her disgrace from them.

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It is a well settled legal principle, that every man's house is his castle—for the security of himself and his family. The word "castle" is a term of the law. It does not signify that a man keeps his family within battlemented walls—but it is used as a figure of speech to denote that his residence, though it be a hut which can neither keep the rain nor sunshine from penetrating its roof, is nevertheless, for every moral and legal purpose, as much a fortress as if it were constructed for one. The thatched roof, the humblest hut that rears itself to the most limited height in the face of heaven, is as much a castle for the protection of a man's wife and family as though it were a castle in reality—and whoever enters it, even though it be by his invitation, in the guise of a friend, but in reality as a seducer, is a trespasser upon that home. That is the principle I want to strike home to your hearts upon this occasion. Under such circumstances you have the same right to eject him from that castle that you would have had had he entered against your will. It is purity of heart only which entitles him to embrace the privilege you have accorded to him.

This brings me to the fourth question in order, which was—as to the reason, or principle, or meaning of the old rule, that homicide committed by the husband on discovering his wife in adultery, either by slaying the adulterer or adulteress, is manslaughter. Not only can the husband slay the adulterer, but if the guilty parties be together, he can pick from them and slay either or both. Now, the question, if the court please, is this: Does this rule, which made the killing of an adulterer manslaughter or a merely nominal offense, apply only to cases where the guilty parties are caught in the act? If so, the husband will have to wait a very long time before he becomes vested with the rights which such a rule would give him. Such a thing may have happened, but if the husband never has his right to slay the adulterer until he catches him in

coition with his wife, in the natural course of things he will never have the right at all.

That is all that any husband can expect—imputation and strong circumstances leading directly to the door of truth; and if he is never invested with his right to kill until he has more than that, then it is denied him altogether!

Is not the man who discovers some sign, after the admission of guilt by his wife, corroborating her statement, as much the victim of passion as though he had surprised the adulterer in his guilt? Does it make any difference how the knowledge is gained? Is the spectacle more exciting than the belief? It is when suspicion changes into proof, when the mind can no longer lay hold of or reason upon doubts, that the tumult of the passions commences, and while it rages it is vain to try to assuage them.

By the law of England, it is treason to defile the queen consort or regent, and also the heiress apparent, but not the queen dowager. The reason is, it puts a spurious heir upon the government, and the crown, in that way, might pass into illegitimate hands. We have no government here transmitted by inheritance, unless it is the government of families; but is not the diadem of the family honor as dear and costly as any that ever graced a monarch's brow? Where is the man who does not contemplate the honor of his family as it flows from father to son with the same reverence and attachment with which he would contemplate the governmental crown as it passed from the head of the incumbent to his successors? You, all of you, know the loyalty of an Englishman to his government. Allegiance was never more strong than is that of the subject there to the sovereign. And if attachment like that can grow up between individuals and the government that grinds them down, how much stronger must be the attachment that grows up between the members of the same family! Let the same sanctity that attaches to the nation's queen attach to the queen of every family altar. Shall the palace be purer or securer than the hut? Shall one's lawful children mix or commune with the living monuments of his wife's inconstancy? Shall the offspring of another man divide with one's lawful children their patrimony? Shall every door be swung open to the adulterer? As thrones and crowns do not go with us by birthright, let the ægis of the law extend itself around every family castle. *Cuckold!* Who would live to have it written upon his back? What man so made of flint that he could walk in the presence of his fellow men, and feel that some person was secretly smirking or smiling at him, because he knew, if *he* did not know, of his wife's inconstancy? What is the

choice? The choice is for the injured husband, in the midst of his agony and despair, to lay violent hands upon his own life, and leave the course free to his wife's seducer, or to lay those violent hands on the life of him who has justly forfeited it. Remember that we were made in the image of the great Creator. Man was made erect, and to walk erect upon the face of the earth, and when the immortal soul was breathed into his nostrils, he was invested with dignity of character, and with instincts to protect that dignity of character; and in the same way, in which his instincts tell him that his God lives, he is told to defend his dignity, even to the extent of his own or his neighbor's life.

This brings me, if the court please, to the last consideration in connection with this subject, which constitutes the fifth question I proposed to the court, viz: what was the effect of the rule which lowered or reduced such a killing to manslaughter? I design showing that it was equivalent or tantamount to an acquittal, that the rule at common law, which made such an act manslaughter, was, in effect, declaring that there was no offense, or so light an offense as not to be worthy of punishment.

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It is important for you, gentlemen of the jury, to know some of the facts of which he was aware at the time of his collison with the deceased. He knew when he met Mr. Key, on the afternoon in question, that he was about his house for the purpose of making an assignation with his wife. He knew that he had hired a house but a few blocks from his mansion, where he met his wife. He knew that he had the aid of a park, and a club-house, and an opera glass, which enabled him to see whether or not it was safe for him to approach his habitation. The thing was well considered by Key! He hired the house in a part of the city from which he thought no witnesses could come against him; in a part of the city populated chiefly by blacks, where, from his legal knowledge, he knew that facts seen by them were not seen at all. All the weapons which, as an adulterer, he required, he had about him on the afternoon of this fatal occurrence. He wanted no Derringers to accomplish his end. And although there is no proof before you to show that he was not armed at that time, the evidence to be adduced on the part of the defense will be that he was a man who was in the habit of carrying arms. He was provided, no doubt, with all that was necessary to protect his life. At all events, he was furnished with all the means serviceable to him in the pursuit of his adulterous intentions—his white handkerchief, the signal of

assignation—the adulterer's flag—and the other appliances of an adulterer's trade.

Mr. Sickles knew that Key was in the habit of carrying his opera-glass. He knew that he was in the habit of availing himself of the club-house and park, and that he had been frequently seen about there for the purpose of making an assignation with his wife. He had no knowledge that he was coming there that afternoon, and he saw him without any forewarning whatever. But he knew what the purpose was that brought him there. What, then, must have been the condition of his mind? Mr. Sickles did not invite him to that vicinity. The meeting was the result of accident, and when his eyes rested upon the destroyer of his happiness, he associated him at once with the facts he knew, and went forward, in the transport of his rage, to the consummation of the deadly scene. I state these facts that you may be able to appreciate the point I am discussing.

Is it possible that, under these circumstances, Mr. Sickles could have acted in cold blood? Was it possible for him to know what he did of the relations of Mr. Key and his wife, and yet look upon him, even though he saw him accidentally, and preserve his equanimity? If Mr. Sickles was excited, was it an instance of passion unduly excited? If he was in a state of white heat, was that too great a state of passion for a man to be in who saw before him the hardened, the unrelenting seducer of his wife? Mr. Key did not yield to temptation in an erring moment. It was not while any sudden fit was on him, he deflowered the wife of his friend! It was a deliberate and systematic crime from beginning to end.

Though he has passed from the scenes of the living, and though he may be entitled to be kindly remembered in other things, so far as he forms the subject-matter of this inquiry, his faults are to be exposed in their proper hues and with all their aggravations.

As to the amount of excitement which resides in that provocation, it is not necessary for you to speculate, because it has been conceded by the flintiest-hearted judges that ever presided over the administration of criminal justice, that jealousy is the highest rage of man, and adultery the greatest provocation that can be given to him. I had, in the same connection, also considered the rule making the slaying by the husband of his wife's adulterer man slaughter at the common law.

I had left off in the consideration of one of the gravest questions arising in this case, the question as to whether there could be any criminality, when the mind was in a condition which exorcised from it all will or intention. We understand the basis of accounta-

bility, divine and human, to be the possession of that amount of reason which enables us to know the right way, and of that amount of reason which enables us to select it; in other words, in the language of the criminal law, "intention is the essence—the soul of criminality." In the case of every crime there is a body and an animating principle, precisely as in nature. Every crime is divided into two parts; first, the *corpus delicti*, as it is called—that is the body of the offense—and it is a mere dead, inanimate body, without that exciting principle which gives it life; secondly, the intention, or will, which enters into it.

Although, in the present case, a human being was slain, nevertheless, we say the soul of that act, that which could turn it into a crime (if it could become a crime at all), was never infused into it; that there was not that will or intention on the part of the slayer, at the time of the perpetration of his act, which rendered him amenable to a criminal tribunal. The proposition I had submitted on this point was this: that whether the state of mind was produced by disease, or provocation, was perfectly immaterial; the inquiry for the jury was, what was the state of mind, and I submit to you that that is a proposition founded in sound reasoning. Is it material how a result is accomplished, so long as it is accomplished? There is one exception to this rule, and that is, where a man takes into his mouth, voluntarily, that which steals away his brains, the law says that he is responsible for every act committed under its influence; for its maxim is, "*nam omne crimen ebrietas, et incendit, et detegit*," drunkenness both inflames and discovers the crime committed under its influence. In this case, however, there is no such thing, for Mr. Sickles was not a party to the origin of the provocation, which acted upon him and induced him to the commission of his act. There might be something in favor of the prosecution, if that ground could be occupied by it, but he stood entirely clear of the conduct of this adulterer, was in no way privy to it, had never connived at it, and the first knowledge he gained of it was the moving cause to the commission of the act for which he is now arraigned before you.

Gentlemen of the jury, I ask you this: If the brother who voluntarily assumes to redress the wrongs of his sister, to the extent of killing, when the father of that sister, her divine, her human protector is in being, for where the parent exists, no peremptory duty is cast upon the brother to defend the sister, unless where violence is inflicted upon her in his presence (or in similar cases), and the same duty is cast upon the stranger who witnesses its infliction; if the brother who does that stands excused by the verdict of a jury

from the consequences of this act, because the provocation was too much for him, upon what principle can a difference be indulged or a distinction drawn as to a husband intervening to avenge an outrage upon his marriage relations? These are all the authorities to which it is necessary for me, in the hearing of the court, to ask your attention upon this branch of the point I am engaged in considering.

As to the third division of this subject—how far the mind of the defendant coincided with the established legal tests of mental unsoundness at the time of the killing in question—I shall occupy your attention but a few moments upon it. You can answer this as men, as husbands, as fathers, as brothers. We need no books here to tell you with what affections the human mind is endowed. It is a matter for your own common sense. Your own innate feelings will serve you better, in reference to this, than the citation of authorities, or any enlightenment of mine. You are qualified to respond to the question, as to what must have been the frenzy of Mr. Sickles, when he encountered the deceased under the circumstances leading to his death. There was no deliberation in the meeting. It was purely accidental. If he had thrown out a bait—if he had invited the deceased to that vicinity, in order that he might go forth from his mansion, armed, in the fearful manner painted by the learned counsel for the Government, and slay him, there would be a feature in this case which might appall us. There is no such feature here. Mr. Key was in the neighborhood of Mr. Sickles' mansion, following the bent of his own infamous and wicked inclinations. The very ferocity of the attack upon the deceased, as testified to on the part of the prosecution—the murderous character which they have tried to impart to it—proves conclusively the state of mind which actuated and prompted the defendant to his act. This is a speaking fact. He encountered the deceased without any expectation of doing so. He met him as casually as though he had met the veriest stranger; and the ferociousness with which the witnesses for the prosecution represent him as assailing the deceased, is indicative of the impulses—the irresistible impulses, which drove him on, and to which it was impossible to oppose any resistance.

Reflect, again, for a moment, upon the fearful tenantry of the human breast. The emotions are there. The passions have their abode there. Shame, anger and grief claim it as their residence. How must they have been excited in this defendant, over the provocation they received? Could reason exert any sway over them? Amid such a tumult, what voice could be heard? To what tones

could the ear of the mind incline itself? Where was the free agency of the defendant, then? Where was his will? Where, his intention? Who will call such a condition passion? It is an exaggeration of the feeling—a misuse of the term!

As one of his counsel, I maintain that the act of the defendant was committed while in a state of mind such as the circumstances would naturally, necessarily engender, and the humanity of every man can understand the meaning and force of the remark!

Begging you, gentlemen of the jury, to keep in view these considerations, namely: That the defendant was in no way connected with, or responsible for, the conduct of the deceased; that he neither countenanced nor promoted it; that it was a direct invasion of his most sacred rights; that it involved, not merely the overthrow of his household, but the destruction of his own self-composure and happiness; and that he executed judgment upon the deceased while almost in the act of flaunting the adulterer's signal. I shall proceed to give you a brief narrative of the facts of this case, and then commit it to you, so far as my present duty is concerned. Who, let me ask you, were the parties to this transaction? As I have said before, I shall speak no unkind word of Mr. Key. I shall place the facts before you, and leave them to speak to you. He was a man of mature years. He was a man about forty years of age, as I am informed. He had been a married man; and at the very time of his misconduct, he had the monuments of that sacred relation before him, daily, to warn him of the wickedness of his course. He himself had assumed the marriage vow, and he knew the solemnity of it. He could tell himself what would have been his own feelings, if his own home had been dishonored; and he could very well have conceived how he would have acted, if he had discovered the author of that dishonor. He could appreciate the horror of a wife's disgrace!

His profession was such as should have imparted some gravity to his character. There are some occupations which do not interfere with the frivolity of human nature; but if there is any profession in the world, short of the pulpit, which ought to communicate gravity to human mind, it is the profession to which I belong. The very business of our profession is to study out the rights of other men, and to observe them; and therefore a lawyer, above all others, before every tribunal, whether it be erected in the arch of the heavens above, or upon the face of the earth, is entitled to the least charitable consideration, for such misdeeds as are wanton encroachments upon what belongs to his neighbor.

What, too, was his position? He was the prosecuting officer for

this district. He was selected to conserve the cause of public morality and public decency. It was his business to see that your homes were protected against seducers and adulterers, and every other species of criminals. Yet he robed himself in the garb of hypocrisy, came into this court, and hunted down, with almost unparalleled success, the very worms that crawl upon the face of the earth, while full-grown men in crime, such as he himself was, were permitted to stalk about this country not only unpunished, but not even admonished or reproved.

If there ever was a case in which a man, though tempted by a woman, should have imitated the example of Joseph, who left his garment in the hands of Potiphar's wife, this was one, above all others, in which the man, rising above the dominion of his passion, should have left behind him some proof which, by the mendacity of the woman, could have been perverted into evidence of his guilt.

Who was the husband in this case? He was a man, as I understand, some years younger than Mr. Key. He was accredited to your city, as a member of the councils of the nation. He came here from the great commercial metropolis of the continent—a city upon which every part of this Union looks with pride, and which, however objectionable some of its features may be, nevertheless will be conceded by every American heart, to be the first city of our Union. He was here in the way of duty, and by way of showing Mr. Key, and you, his confidence in the protection which was guaranteed to him by the laws of the district, he brought within its precincts his wife and child. He threw them, with himself, upon your laws for protection.

What were the relations of Mr. Sickles? We shall show you what they were. So far as Mr. Sickles was concerned, they were those of sincere friendship; so far as Mr. Key was concerned, they were those of professed or avowed friendship. It has been said by the Psalmist:

"For it was not an enemy that reproached me; then I could have borne it; neither was it he that hated me that did magnify himself against me; then would I have hid myself from him.

"But it was thou, a man mine equal, my guide, my acquaintance.

"We took sweet counsel together, and walked unto the house of God in company."

The wrong of the stranger may be borne with patience, but the perfidy of a friend becomes intolerable. You will be shown, gen-

tlemen, that Mr. Sickles had interceded to have Mr. Key appointed to the very place which his private life disgraced; that all the influence he could wield to secure for him the elevated position of prosecutor at the bar of this court, was thrown into the scale for the purpose of enabling him to attain the object of his ambition. We will show you that Mr. Sickles had sent him private clients, and that on one occasion, when he was obliged, in consequence of a difficulty relative to the hiring of a house, to employ professional services, he retained Mr. Key as his counsel in opposition to the other counsel for this prosecution (Mr. Carlisle); so that there were not only friendly, but professional, relations between them, which it ought to sink any man to the lowest depths of disgrace to think of compromising.

Mr. Key *pretended* that he was in bad health. I say *pretended*, because, although he had not strength enough to encounter the sphere of duty which was assigned to him here, nevertheless, he had strength enough to carry out his designs in reference to the wife of his neighbor. Had he extended to this court the same energy which he exerted in the prosecution of his adultery, he would have been physically, as he was mentally, adequate to discharge every duty which devolved upon him.

He becomes a visitor at the house of Mr. Sickles. Their acquaintance, I believe, extends back some six years. Mr. Sickles is a man in public life. He is compelled to trust to the purity of his wife. He is compelled, sometimes for considerable periods, to be away from his family mansion, and to leave his wife under the guardianship of her own chastity. Mr. Key goes there in the character of a friend, and exhibits those attentions which gallantry is ordinarily supposed to prompt, and in that way laid the foundations upon which, as an adulterer, he sought to rear his destructive fabric!

We will show you, gentlemen, that as early as the twenty-sixth of March, 1858, it was reported, so as to be heard by Mr. Sickles, that this Key was dishonoring him. Mr. Sickles sends for him. He stands upon his honor as a man. He denies the truth of the impeachment. He traces the author from one to another. He sends and passes notes, and when he is unable to discover the real author of the rumor, he represents it to be the work of calumny. He addresses a note to Mr. Sickles, speaking of the ridiculous and disgusting calumny. We will be able to show you that if the intimacy with Mrs. Sickles did not exist at the time of that note, it, at all events, commenced a few days afterwards. To show you how base he is—when he is charged with dishonest conduct towards

Mr. Sickles, he says this is the highest affront that can be offered to him, and that whoever asserts it must meet him upon the field of honor, at the very point of the pistol! He thus cuts off all communication, on the part of the world, with Mr. Sickles, thinking that his baseness would, thereby, go undetected; and that was the reason why, for a period of nearly a year—though he was, no doubt, almost daily in the practice of his treachery upon his friend—his friend, until the development came upon him, as I shall presently state, never harbored a thought of suspicion against him. We will show you, gentlemen, that from this time until the twenty-fourth of February, 1859, his relations to Mr. Sickles appeared perfectly friendly, and that Mr. Sickles reposed every confidence in him.

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On the Thursday before Mr. Key's death, Mr. Sickles had another dinner party at his house. Mr. Key was not invited to it. After dinner, his wife accompanies some friends who have been at the dinner to Willard's hotel, for the purpose, as she says, of enjoying a hop there. Mr. Sickles goes there after her. When he enters the room, he finds Key sitting by her; but as soon as Key sees him he abruptly leaves the wife. Nothing but his own sense of shame could have prompted him to it! On returning home, and opening his letters, Mr. Sickles finds an anonymous letter among them, which was the origin of the discovery of his wife's inconstancy, and will be produced in evidence before you.

The substance of that letter was, that his wife was in the habit of meeting Mr. Key at a house on 15th street, between K and L—that Key had hired the house for the express purpose, and had as much use of her person as he (her husband) had. The nature of Mr. Sickles would never have permitted him to trust to an anonymous letter, if framed in the ordinary manner. He is a man of elevated character, and would treat an anonymous communication with contempt. But there was a degree of circumstantiality about this letter; it went into details, located the house, and gave him such an inkling of facts as satisfied him there was something requiring investigation. He institutes one, and becomes satified of all but the identity of the person who visited the house. It turned out, on inquiry, that there was a house located where this was described as being, that Mr. Key had hired the house, and that he was in the habit of going there sometimes with, but oftener to meet, a female, who went in either before or after him. The only question, then, left for Mr. Sickles to solve was, whether the female who came to the house was his wife or some other person.

On the following day (Friday), Mr. Sickles commissioned Mr. Wooldridge, his friend, to inquire into the identity of the woman who accompanied Mr. Key to the house in question. We will show you the circumstances under which he commissioned him to do this. Mr. Wooldridge went to 15th street and arranged with the person occupying the house opposite the one rented by Key, for the use of a front room, on the next day, to enable him to watch and see, in case the woman came there on that day, who she was. While there on Friday, he understood that the woman had last been at the house on Thursday. Having made the arrangement for the use of the room on the next day, he returns and informs Mr Sickles that the woman was last seen at the house on Thursday. On Saturday he goes to the house, and, from the room which he had engaged, he watches for from five to six hours, and, not discovering anything, returns to his boarding-house, and learns that Mr. McClusky, who, I understand, is an attendant at the capitol, had been there for him with a note, and while there Mr. McClusky returned and delivered to him a note from Mr. Sickles telling him "to be exceedingly tender in the prosecution of his inquiries, for he has reason to believe that his wife is innocent, and that he wishes her to emerge from the suspicion she rested under, without the public becoming possessed of the imputation which the anonymous letter had cast upon her." As soon as Mr. Wooldridge receives the note, he goes to the capitol and there sees Mr. Sickles, and he is then under the necessity of disabusing his mind and disappointing the hope he had indulged as to the fidelity or constancy of his wife. As soon as he saw Mr. Sickles, he told him that while at the house opposite the house in question, on 15th street, on that Saturday, he had learned that it was on Wednesday, and not on Thursday, the woman had last been there. Of course Mr. Sickles, having by inquiry satisfied himself that his wife was not at the house on Thursday, when the day was shifted to the right one, lost all confidence in her innocence. He then became satisfied that it must be his wife. Mr. Wooldridge described the articles of dress which the woman who accompanied Mr. Key wore when she went to the house, and Mr. Sickles at once recognized the apparel of his wife. Conviction more and more fastens itself upon him, and he finds the hope he had indulged that she was pure, because she had not been to the house in question on the Thursday before, a fallacious and delusive one. He returns home; he questions his wife; he puts her guilt to her in such a way as that she thought she had been exposed, and, under its pressure, she acknowledged her dishonor and furnished him with a written confession of it. As soon as this con-

fession is given to him, he sends for Mr. Wooldridge, by note, and directs him, if he receives it before ten o'clock that night, to come immediately to his house, or, at all events, to come early the following morning. Mr. Wooldridge was out when the note was sent, spending the evening on some jovial occasion, some presentation or other, and did not return to his boarding-house till near midnight, and of course did not get the note in time to see Mr. Sickles that night. On the following morning, between ten and eleven o'clock, he went to the house of Mr. Sickles, and there he found him a perfectly frantic, frenzied man. Mr. Sickles comes in, throws down the written confession of his wife, tells him that the whole story has been acknowledged, and Mr. Wooldridge, with his own eyes, reads her guilt as it is embodied in her statement. We will be able to show you what the anguish and grief of Mr. Sickles were at that time. The day before he was unwilling to relinquish the idea that his wife was pure, but the proof thickened too strong against her, and he was compelled to abandon the hope of her innocence with reluctance. How must his anguish have been heightened when he discovered that her guilt was an undoubted fact!

If Mr. Sickles was not perfectly demented at the first knowledge of his shame, how must his frenzy have been heightened as he had to impart the knowledge of that shame to his friends, one by one, as they entered his mansion? Grief, when its cause is shame, becomes tolerable to a certain extent when we can keep our shame to ourselves. Is it not the tendency of human nature to bury such secrets in one's own bosom? There are griefs which we delight to impart to others. When the icy hand of death has closed in its sleep the eyes of a relative or friend, we delight in imparting our anguish to those who come with warm hearts and cordial hands to administer to us the balm of consolation. But when the cause of grief is Shame, Man hides his diminished head, for he feels that it is diminished by the disgrace which afflicts him. Gentlemen of the jury, I ask you what must have been the anguish of Mr. Sickles at this time? He had not only the first knowledge of his wife's infidelity to contend with, but, as his friends presented themselves, one by one, he was forced to tell them, as an explanation, of his condition, of her dishonor and her downfall. The scene which took place while Mr. Butterworth was at his house will be described by Mr. Wooldridge.

Some considerable time before Mr. Butterworth came there, the colored man servant, on raising the shade of the front window of Mr. Sickles' library, saw Mr. Key, and remarked it to Mr. Wool

dridge, who looked, and saw him come through the gate of the park and across the street, in which Mr. Sickles' house was, and go up past the President's mansion. Key, no doubt, was perfectly desperate on this occasion. He had not seen Mrs. Sickles since Thursday. He had not been able to get signals to or from her. All communications had been cut off. He had hired his house for nothing. Days had gone by since he had rifled the casket of his friend's affections. Like all libertines, he was "eager for the fray" of his passions. He was carried headlong by them, and was shamelessly, "in the soft gush of the Sabbath sunlight," watching the castle of his neighbor. You can account for Key's conduct on that memorable Sabbath in no other way.

It was between twelve and one o'clock in the day, when Mr. Butterworth first came to Mr. Sickles' house. After he had been there some time, passing through the harrowing scene that was enacted on his first meeting with his wronged and injured friend, he left, saying that he was going to Willard's Hotel. When he had been gone about ten minutes, Mr. Wooldridge looked at his watch, and it was twenty-five minutes to two o'clock. Almost immediately after this, as he (Wooldridge) sat at the front library window, he saw Key passing the house on the opposite side of the street, going toward Pennsylvania avenue. He was with a lady and gentleman, walking on the outside of them, next the curb-stone. As he passed, he took out a white pocket-handkerchief, and waved it towards Mr. Sickles' house, looking at the same time toward the upper part of the house. When he got to the avenue, he shook hands with the gentleman, and entered the park, and the trees hid him from Mr. Wooldridge's view. The gentleman and the lady went down the avenue, on the outside of the park. Mr. Butterworth returned in a few moments, and as he entered, Mr. Wooldridge told him what he had seen—that Key had just passed. "You did not tell Mr. Sickles?" said Mr. Butterworth. "No," said Mr. Wooldridge, "I could not find it in my heart to do so." They were resolved to keep it from Mr. Sickles if they could, that Key was prowling on the outside of his mansion, with dishonorable intentions toward him.

Instantly Mr. Sickles came down stairs. I do not fill up the interval between Mr. Wooldridge's coming there on that day, and this point, with a minute statement of what Mr. Sickles said or did. It would occupy too much time. At this point he rushed down stairs in a perfect frenzy. He had seen Key pass with the lady and gentleman, and wave his handkerchief. We have understood that the prosecution mean to try to show that the handker-

chief was waved at a dog, which, at that moment, happened to cross Key's path. He must have imagined sometimes that he saw dogs, for, on some occasions, we will prove, he waved it when there was no other object in view but Mrs. Sickles or her house to wave it at. It was, however, his signal for an assignation. Mr. Sickles now knew that his wife had been dishonored by this man; and, also, the meaning of the wave of the handkerchief. He was frenzied. We will show you that so close and compact were the occurrences at this time that the inmates of the house did not know, until they heard that Key had been shot, that Mr. Sickles was outside of the house.

Mr. Butterworth left the house again. Mr. Wooldridge saw him go down the steps of the stoop. He was alone. Mr. Sickles was not with him. Mr. Wooldridge went to the drawing room, and got the stereoscope that was there—brought it to the front library window, and as he was arranging it on the window-sill, he saw persons running to the farther corner of the park. He did not dream that Mr. Sickles was outside of the house, until a colored girl came to the house and announced that Key had met his death. Reflect, gentlemen, for an instant upon the condition of Mr. Sickles' mind at this juncture.

The night before his wife had acknowledged her guilt; he had passed the night without sleep; he had sighed and sobbed it away; as his friends came in he was compelled to unbosom to them the story of his wife's dishonor; to crown all, he saw the adulterer, his flag floating, as it were, for the purpose of inviting or enticing his wife from her home. It is for you to say, from these facts, what must have been the condition of his mind at the time he went into the scene that resulted in the death of his wrong-doer.

After specifying a few other facts, I have done. Why was Mr. Key constantly in the vicinity of Mr. Sickles' house? We will show you that he lived in another part of your city, a very considerable distance from it. Yet he was in the habit of riding by it on horseback, at all hours, and of showing himself off, in every way he could, to the greatest advantage. In his intercourse with Mrs. Sickles, too, he resorted to and practised all the blandishments which adulterers study and cultivate, to reach the target they have set before them. How did he make his assignations? If he encountered her in the President's mansion, he made them there. If in the mansion of some senator, he made them there. He tainted, with his vile appointments, the atmosphere which your wives and daughters—the virtuous females of this district—were obliged to breathe. The very air about was laden with them. He followed

his object wherever she went. She could hardly get more than a hundred feet from her house, before he was, unexpectedly, by her side. If she walked, he was on foot. If she was riding in a carriage, it was stopped, and he got in, and rode with her for two or three hours; and the directions to the driver were, that it must be driven through the back streets. He became a subject of kitchen comment. He was called by the servants "Disgrace." That was the name bestowed upon him by the kitchen department of Mr. Sickles' house. The district attorney of the county of Washington had become a by-word and a reproach in the kitchen of one of the houses in the district; and as often as he entered the house, or was seen approaching it, the remark was made, "here comes Disgrace."

* * * Even the servants in the house felt the pressure of his infamous intentions to the defendant's wife.

We will show you, gentlemen, that between the twenty-fifth of January and the twenty-fifth of February last, Mrs. Sickles and the deceased were seen to enter the house on Fifteenth street from six to eight times—sometimes by the front door and sometimes by the rear door, reached through an alley way in the rear. We will show you that, on one occasion, about two weeks before his death, they were seen walking together on Sixteenth street, in the rear of this house, when, owing to the mud, the walking was not fit for females—at least in that section of your city. We will show you that, on or about the sixteenth of February last, the deceased was spoken to on Fifteenth street, between L and M, while walking with Mrs. Sickles, and that he was whirling a night-key in his hand at the time. That they were plainly intending to enter this house, and were watching for a chance to enter it unobserved. That they concealed themselves some time behind a house on the corner of Fifteenth street and M. That they were then followed to the corner of L street, through L to Sixteenth street, through Sixteenth street to K, through K to Fifteenth street, and then to M. That the walking was very muddy, and that the streets were crowded with persons looking at them; for, while they thought they were unobserved, they were the "observed of all observers." We will show you that on or about the twenty-third of February last, they were at the drug store together, corner of Vermont avenue and K street, and that they left there together, and disappeared so as to leave no doubt that they entered the house in question. This was between three and five o'clock in the afternoon. We will show you that the shawl the deceased wore on that afternoon was found in this house, after his death, and identified.

Whenever a question, appealing to similar feelings of morality

has been put to other juries, they have not sought to evade the responsibility of answering it. They were proud of the glory of being permitted to do so, and fearlessly and promptly have they given it a response. Less than the imitation of their example, on your part, would be a violation of your duty—do I go too far when I say, a disregard of your oaths? Mercy is your attribute, as much as it is that of the Executive. It should temper all your deliberations.

Lord Erskine relates, in his celebrated opening for the defense, on the trial of Hadfield: It was the case of a woman who was tried in Essex for the murder of a Mr. Errington. He had seduced her, lived with her, and then turned her off for another woman, whom he had married, or (as Erskine said), "taken her under his protection." She went deliberately to his house, and shot her wrong-doer. She was goaded to her act by a sense of injury; and, after her acquittal, she became absolutely insane. She was not insane when acquitted; and Lord Erskine rather mourned over her acquittal, taking place as it did, for it conflicted with his favorite idea of insanity from delusion, a view of which you have already had. He advocated the principle that *real* wrongs produced violent resentments; *imaginary* ones, insanity. The jury, in the case of this unfortunate woman, read from, and practised upon, the Book of Human Nature. They spurned all fine-drawn theories, looked to the impulses of the human heart, and held, that with such a provocation as she had, desperation did not exhibit itself in a criminal form. This was the voice of an English jury.

In the year 1843, Singleton Mercer was tried in the State of New Jersey, on a charge of murder, in killing a young man who had forcibly deflowered his sister. He had been some forty hours under the influence of the feeling, which prompted him to take the life of the deceased. The deceased and a friend, in a close carriage, got on board the ferry boat to cross from Philadelphia into the State of New Jersey. As the boat was just nearing the New Jersey shore, the friend of the deceased, who had left him alone in the carriage, hearing several pistol reports in its direction, went to the carriage to see what it meant. When he arrived there, he found the deceased in a dying state. Mercer was arrested on the boat; did not deny the deed, and manifested a perfect resignation to his fate. He was tried in a State which prides itself upon the severity of its justice, and yet an honest jury acquitted him of all criminality.

In the year 1844, Amelia Norman was tried in the court of General Sessions, at the city of New York, on a charge of assault and

battery with intent to kill. It appeared from the testimony, that she had been seduced by the prosecutor under circumstances of great cruelty; and that after serving him in the capacity of mistress, until he was sated with her charms, she was finally abandoned by him. She tried to persuade him to do something for her. Her health had been much impaired during her association with him, and she requested a little, to stand between her and want. He remained obdurate. She became frantic; furnished herself with a dirk knife, went to his hotel, in the great thoroughfare of our city, saw him in the broad daylight in the act of entering it, once more besought his aid, was repulsed by him, and, in her agony, stabbed him, and well nigh deprived him of his life. She was taken into custody on the spot. Her situation and her wrongs came to the knowledge of a distinguished authoress, whose sympathies were enlisted for her. This lady took her under her protection, ministered to her during her imprisonment, and employed counsel to defend her. That counsel was my own brother, who now is among the dead. When he ascertained the circumstances of the case, he returned his fee, and refused to serve under any other employment than that growing out of his compassion for an injured woman. Her trial came around; it lasted several days, and resulted in her acquittal. So great was the public interest in her, that on the night the verdict was rendered, the court-house was besieged by thousands of our citizens, and when the result was announced, the welkin rang with the plaudits of an excited populace!

Gentlemen of the jury, how instructively do these cases come home to you. The rejected mistress—the contemned father—the disgraced brother—have been received into the merciful keeping of discerning juries. In matters of natural right, the intelligence of the whole world is in unison. What an English jury commenced, American juries have not refused to imitate or extend. Shall it stop with the records of the past? Or shall the husband, whose hopes have been broken, like the tender flowers (as it were) upon their stocks, be placed behind the same shield which has protected other defenders of our dearest rights? Even in your own district has been planted the seed, of whose growth we seek to reap the harvest. The honor of initiating in this locality the doctrine of natural justice, under proper qualifications, has not been reserved for you. It has already taken root here. You can follow the example which has been set you. You can apply it to a new wrong. You can announce that a husband's feelings and a husband's happiness must not be made light of. My client, it is true, has not aimed at being a public champion; but his doom cannot be fixed

without affecting, more or less, by the precedent you establish, the great moral interests of society.

Will you or not give in your adherence to the examples which have been rehearsed to you? You have your own immediate citizens, and the citizens of other States, where justice is not sold, and where it cannot be bought, putting the redemption of a juror's oath upon the principles which, in one aspect of it, constitute the pillar of this defence. Will you renounce your allegiance to those principles? Will you refuse to yield yourselves to them? Or will you rather follow in the wake of such precedents, and render that judgment which will accord with perfect justice, and, at the same time, be consistent with the adulterer's offense.

Gentlemen of the jury, shall the abominable doctrine go forth from this court that pecuniary compensation is the only mode of stanching the bleeding wounds of a husband? What is the effect of that doctrine? It tells every man that if he will pay the price which a jury may set upon his seduction or his adultery, he can enter any house he pleases and rifle it of its purest contents. Is that to be the doctrine of your district? Are we to have a mere list of rates, or a mere tariff of charges? Is the lower house of infamy to fix one, and the higher house of infamy to fix another? Shall an American jury say to the seducer or adulterer what he shall pay for his crimes. The very moment you act upon that principle you tell every libertine he may enter any house in your district, if he is only ready to foot the bill which shall be presented by an American jury, and stand clear of all human or divine accountability. In God's name repudiate that principle from your verdict. You sit, where it is your inestimable privilege to sit, under the immediate protection of that fire which burns upon the great Altar at which all the other torches of our government are lighted. You are here, at the seat of our Federal Government. You are overshadowed by the illustrious name of Washington. Let its recollection inspire you with fitting and becoming thoughts—and be reluctant—be loath to incorporate into your verdict a principle which—if it is the one upon which you act—will have a more demoralizing public effect than any other that could be sustained by an intelligent jury!

Acquitted, amid immense applause.

TRIAL BY JURY.

Address at Michigan Law University, Ann Arbor, March, 1875.

By Hon. CHAS. S. MAY.

The frequent demands of the press for a change or abolition of the jury system, and the unfounded attacks on "ignorant" juries, may be better comprehended after a half-hour's study of the question. The elaborate remarks of Chief Justice Ryan, in another chapter, and the exhaustive review of the subject herewith given, are alike instructive and furnish excellent reading. We have a right to look for something more than common authority in an address to law students. The high character of both orators on this subject, their eminence and learning, entitle their researches to a most careful consideration. The aim of a lawyer is to get wisdom. The foundation of oratory is wisdom. Here, then, is a clear fountain from which to draw condensed information on trials by jury.

Mr. May said:

I shall use the hour which custom gives me on this occasion in speaking to you of one of the great institutions of English justice and the common law; an institution of high concern to the State and all its citizens; of supreme and practical interest to every lawyer—"The trial by jury."

It is a theme of most ample dimensions, and I shall not undertake to give all its history or all its learning. In the limits of such an address as this, I shall only take a few views of the subject, and these chiefly of a practical character. About to enter, as these young men are, upon the practice of the law, I can think of no topic more fruitful in suggestions to me, or likely to be of more interest and profit to them.

ORIGIN AND HISTORY OF TRIAL BY JURY.

The trial by jury is Anglo-Saxon in its origin; a part of Anglo-Saxon jurisprudence. Greece did not know it, nor Rome. The Grecian *dicasts*, the Roman *judices*, the Saxon *compurgators*—these may have suggested and helped to form it, but each essentially differed from it as we know it to-day. For the institution in its present form we go back in English history to the reign of Henry II., that same sagacious, far-seeing and intrepid monarch

who waged such stout and unyielding battle with his powerful and ungrateful subject, Thomas á Becket, for the supremacy of the civil over the ecclesiastical power. In the long line of English sovereigns, none has done a greater service to his countrymen and his race than this statesman king, who put the church below the state and incorporated into English jurisprudence the trial by jury in the place of the senseless and barbarous trials by duel and by wager of battle.

Since the Grand Assize of 1176, a period of almost seven hundred years, trial by jury has been one of the sacred muniments of English liberty. While it was yet in its infancy the sturdy barons at Runnymede took care to make it a part of the Great Charter which they wrung from the faithless and treacherous John, the undutiful and degenerate son of its immoral founder. And since *Magna Charta*, in every struggle of the British people against the encroachments of the crown, in every popular upheaval or revolution—in every advance towards a larger and broader liberty, the recognition and maintenance of this institution has ever been stoutly insisted upon, so that to-day it would be easier to uproot the foundation of the British throne itself than to tear this venerated landmark from the British constitution or the affections of the British people. The revolution which dissolved our political allegiance to the British crown did not deprive us of our inheritance of English liberty, and so trial by jury descended to us on the broad stream of the common law. We share it now with every English speaking people. It is not only held in traditional, popular reverence, but it is solemnly incorporated as an inviolable right into the constitution of the United States, as well as the constitution of most of the States of the Union.

WHAT IT IS—ITS MISSION TO FIND THE FACTS.

What, then, is this trial by jury which is thus highly prized and sacredly preserved by the foremost race and the two leading nations of the world? It is an answer to this question, in general and popular terms to say that it is an institution of English and American jurisprudence designed to assist in arriving at the truth in private disputes in relation to property and personal rights, and in cases between the State and the individual for the violation of public law. But it can only approximate to this end. Every form of trial known to the law is but an approximation to, a struggle and endeavor after, the truth and justice of the case. Only with God and in the realm of exact science, working through fixed laws, can absolute and certain truth be reached. For the rest, and in all

the vast domain of moral and legal truth we must feel after and attain to that which is true and just by such aids and lights as God has given us in the reason and conscience of men.

In our administration of justice it is the province of a jury, a trial jury, of which I am speaking, to find the facts. This is a clear and single process, and measures their duty and responsibility. But every case, of course, involves more than the facts. The law of the case is involved also—that which gives to the facts all their significance and consequence as a basis for the claim of plaintiff or defendant. The questions of law may be many or few, but for these the jury have no responsibility. They are to take the law as given by the court, nor are they to ask any questions as to its abstract moral justice, but simply to find their verdict under it. So it will be seen that the work of a jury, though of controlling importance in a trial, is not the whole of a trial, but rather an incident of it. The entire work to be done, the full problem to be solved, is one of a dual nature, of mingled law and fact, and a trial by jury in a court of law is a carefully adjusted piece of judicial mechanism, wheel within wheel, the most perfect and the most complete which human wisdom can devise.

THE JURY SYSTEM DEFENDED—JURY BETTER THAN JUDGE EVEN IN CIVIL CAUSES.

Does it need that I should defend at this late day, an institution thus venerable in years and hallowed by popular affection? Certainly it would seem that I ought not to be called upon to do this, and I shall not, at any great length; but I do not forget that the men of this generation, wiser as they unquestionably are in many things than their fathers before them, have begun to question institutions which have stood for ages, and that the jury system has not escaped attack. To some restless innovators the mere fact that it is old is an argument against it. But every considerate and thoughtful man will, I think, hesitate before condemning an institution which has been in continued daily operation for more than twenty generations of men; which has become intertwined with the history and traditions of his country and his race, and whose germs are found away back in the earliest civilizations. Progress, reform, judicial reform—these are good and admirable things, but we should take care to know what we do in their name. John Randolph once said, in Congress, that "change is not reform." and adding to his words, I may say, with still greater truth, that destruction is not reform. To abolish the trial by jury, to sweep out of use and out of existence with one blow the jury system,

would be a terribly destructive and radical measure, a direct impeachment of the wisdom of the past and a bold and hazardous experiment upon the future.

Happily, there is no great danger that this will ever be done. For the jury system finds its justification in the facts of human nature, which is essentially the same in all ages; in its practical utility and convenience, and in its close and inseparable relations to civil liberty. I say, in its practical utility, and here I touch what is regarded as the chief and strongest point made against it. Many who would retain it in criminal cases and for its possible service in some great public crisis, nevertheless oppose it in civil causes and in the common every day business of the courts. While agreeing with them fully in the reservations which they make in the greater things, I also believe that it is good and useful in the smaller things as well; in civil as well as criminal cases, in ordinary as well as extraordinary times.

First, I believe that a jury is always the best and fittest tribunal to find the facts of a case. I hold this to be true in the very nature of things. I know the argument that is used upon this point, and what is said about unlettered juries, about difficult mental processes, and about the trained and disciplined mind of the judge. But here I believe is the better test. The facts to be found in a trial in the courts are generally the facts of common life. The deductions and conclusions to be drawn from these facts, in nine cases out of ten, are the deductions and conclusions of ordinary human experience. These do not so much require learning and logic as practical common sense, knowledge of human nature as seen in men and not in books, and intuitive perception of right and wrong—qualities oftener found combined, I think, in the jury box than upon the bench.

It will not do to say, that because the judge is generally the superior in natural endowments of the average juror and ordinarily is his better in mental training and acquirement, that, therefore, he will the more surely and certainly draw from a mass of tangled facts the right and justice of the case. For facts cannot be dealt with like principles or arbitrary scientific rules, and right and justice are not always to be arrived at like mathematical results. Often the very learning and discipline of the judge may have unfitted him for this work by educating him away from the people. And it should not be forgotten in this connection that usually the facts in a case are narrated by living witnesses in court, whose look and manner and the probability of whose story should be scanned and weighed by men practiced in the ways of human

nature, and not easily to be imposed upon. But grant, if you please, that there is no advantage in these respects with the jury on the grounds which I have claimed; is there nothing still in the fact that the verdict of a jury is the aggregate wisdom of twelve men, while the finding of a judge is but the wisdom of one man? Do the scriptures say untruly, then, and is there no safety in a multitude of counsel?

Again, it may well be urged as an argument for a trial by jury in civil cases that the judge has already enough to do, to preside in his court, to dispose of routine and *ex parte* business, and to decide all questions of law which may arise upon a trial, including his final instructions or charge, without being burdened with the finding of the facts also. There is reason enough, certainly, why he should, if possible, be relieved of this. We should not ask too much of one man, when we can have the work of many. Besides the finding of the facts and the application of the rules of the law to these facts are two entirely separate and dissimilar processes which do not help each other. They should therefore be given to separate hands to do.

If I am right in these things, then the jury system is justified on the score of convenience and utility, even in ordinary civil disputes, and the objection of costs and expense is of too trivial a nature to be weighed against such solid public advantages. The State and the people can always afford to pay for that which will aid the cause of justice in any degree, and nothing can possibly be so expensive and costly to them as the denial of a full and fair trial to any suitor in court.

BUT CHIEF IMPORTANCE AND GLORY OF TRIAL BY JURY IN CRIMINAL CASES AND AS AN ALLY AND BULWARK OF CIVIL LIBERTY.

But it is in another and greater field that the trial by jury becomes a matter of supreme concern to the citizen, and rises to the dignity of one of the chief props and bulwarks of civil liberty. Here its use cannot well be questioned. Here, certainly, it needs no defense. The leaning of the law, in criminal causes, should be to the side of protection and humanity. And so it is declared to be. The State is great and powerful, and overshadows the individual; and though it be necessary for its good that crime be prevented and punished, yet the State is not greatly harmed by the escape of a guilty man. But the conviction and punishment by death or lingering imprisonment of an innocent man is a thing unspeakably shocking. No care can be too great to prevent such a tragedy. "Better," then, says the humane maxim, "that ninety-nine guilty men should escape

rather than one innocent man should suffer." And all our human hearts and sympathies respond amen to this.

So the law of England and America—the common law—has built up for ages its impregnable wall of protection around the citizen. It has covered the accused with the shield of all its presumptions in favor of innocence, and tenderly, humanely giving him the benefit of every reasonable doubt. And to make sure that he shall have no injustice done him, it has given him the sacred right of a trial by a jury of his peers, where only a unanimous verdict of twelve men shall take from him his good name, his liberty or his life. Not to any single man, however honest or wise, however trained or learned, will the law give over such supreme and terrible functions. Is not this wise as well as humane? Would it be well to change this rule and put such tremendous issues into the hands of a single judge and make him pass upon the law and the fact also, of guilt? I think nobody will thus contend. Whatever may be thought about the wisdom or policy of jury trials in ordinary civil disputes, every lawyer and every right thinking man will wish the jury system retained in criminal causes.

And there is another reason still, even graver and deeper than any I have yet named, why the trial by jury should never be abandoned. Not alone is it a protection and a shield to the individual citizen, but it is also a chief pillar of support to that great civil fabric in which are bound up the rights and liberty of every citizen of this country and of England. The right of a trial by jury, a great popular right, a right belonging to the whole people, is needed in the State to guard against tyranny and oppression by the government. In the mother country, this right expressly named in *Magna Charta*, of a trial by a jury of his peers, has been to many a noble English patriot the open door of escape from the bloodthirsty minions of a tyrannical king. Here we have no favored classes; we are all peers, each of the other, but we all belong to the people, and a jury is pre-eminently a tribunal of the people. Thus, as a fortress and citadel of liberty in which the citizen may take refuge in calamitous times of public commotion or danger, when the safe ways of the State are broken up, and the hand of power is outstretched to bloody and violent deeds of oppression, the trial by jury is worth all that it cost in the long struggle in English history to secure and maintain it. And this great reason of State must therefore be added to all the other solid and weighty considerations which uphold the jury system.

THE WORKING OF THE SYSTEM—ITS DIFFERENT PARTS.

How does this institution, so important to the citizen and the State, and so intimately connected with the administration of the law, meet the ends for which it was designed, and what is needed for its true and harmonious working? Let me glance now at the trial by jury as we know it to-day, in this country, with its usual appointments and surroundings. I want to analyze some of its leading elements, and to speak of some of the duties which it imposes upon its chief actors. For the trial by jury means more than the jury, merely, and its duties. There, besides the jury, is the judge who presides; there are the parties, the contending *rei* of the suit and their witnesses; and there, finally, to complete the scene, are the advocates for the respective sides.

Each of these parties is indispensable to a trial, to say nothing of sheriff and clerk, and other officers and appendages belonging to a court. Each is a portion of the whole, and all must move together to reach a judicial result. Here is the law's mechanism; the wheels and cogs which perform their distinct and separate offices. But this is no inanimate machine which is now set in motion; no material contrivance of human ingenuity, working with wood or stone or iron, and for a material purpose. It is rather the delicate and profound adjustment of the subtle and imponderable forces of the human mind and soul; the perception, the reason, the judgment, the conscience—all called into action, and all combined in the effort to reach those two grand moral ends—truth and justice. All this gives dignity and seriousness to such a proceeding. So, also, is there something essentially picturesque and dramatic in every trial by jury. It is always a living panorama of human life and experience, which is enrolled in a trial in a court of justice; sometimes grotesque and ludicrous as any comedy; sometimes deep and awful as any tragedy.

THE ACTORS IN A TRIAL—THE JUDGE.

Only a hurried glance can I give to the actors upon this stage. First, there is the judge, who presides, and declares the law. His part is a great one, and for him we have all inherited a traditional reverence. At the name of his title, there rises before our minds, from the awful mists and shadows of the common law and its history, the august form of the ideal judge, sitting with stately dignity upon the judgment seat, holding with even and steady hand the great balances of justice and equity; with the law's majesty upon his brow, and the law's terrors in his eye, and robed in spot-

less ermine, type and emblem of the whiteness of his character and his judgments. Alas, that this great presence should so shrink and vanish away when we look upon some of our living judges!

But let us not expect too much of our judges—especially while we pay some of them so little—for they are but men like the rest of us. I do not speak here, of course, of our law judges proper—our judges of courts of last resort—but only of *nisi prius* or trial judges.

The chief qualifications and duty of a judge, who presides at a jury trial, can be easily and briefly stated. First of all, of course, a judge should be honest. Without this jewel in his crown all the rest is worthless. Nothing can make up for this. It is bad enough to be a dishonest man or lawyer, but a dishonest judge is an abomination to men and a grief to the angels. He poisons a clear fountain from which all the people must drink. Let him ever be held in utter abhorrence, whatever his abilities; even if he be great and wise as Bacon. Next, a judge should be impartial. The law is equal, the law is no respecter of persons; and a judge is but a minister and servant of the law. His duty, then, in this respect is plain. Then, a judge should have dignity. I do not mean that opaque and owlish dignity which is simply ponderous; but that which is lighted and lifted up by grace and intelligence; the easy presence and the cultivated manners, combined with the high sense of personal honor and the lofty judicial purpose; all making a judge who adorns as well as honors the bench. Such a judge I saw ten years ago, sitting in a case of murder, in one of the courts of the city of New York, and whenever I see that man's name, as I frequently do, for he has since filled a high executive office, and become a distinguished leader of his party, and one of the public men of the country, I recall him as I saw him then, presiding with that blended gentleness and firmness, and with a grace and finish of judicial manners which I shall never forget.

And a judge should have dignity and weight of character as well as dignity of presence and manners; for when he takes his seat upon the bench, men's eyes will see the man who is behind the judge. For myself, I esteem this one of the most necessary and desirable qualities for a judge; and it is one that I think is too much overlooked in these later times, in our selection of judges. This may be partly owing to the vicious method of choosing our judges by the caucus; but it is certain that there has been a great decline in this respect, in many quarters, and that there is danger that the bench may lose that traditional respect and reverence with which it has always been regarded by the people. The great

judges have nearly always been men of high personal character. We venerate the names of Hale, of Mansfield, and of Marshall, not more for the broad, clear intellect and the deep learning, than for the lofty dignity of character, the high moral purpose, and the penetrating intuition of justice, which like unfailing springs flowed out into the clear pages of their illustrious lives.

Turning now to the intellectual furnishing of a judge, it is easy to see what we want—far easier than to find what we want. First of all, a judge at *nisi prius* should have a clear head and a decisive will. He should apprehend readily and decide promptly. There should be no confusion or irresolution. A jury trial, with everybody waiting, is no place for a judge to doubt, and read law and ponder. It is of first importance that he decide all questions at once, so that the trial may proceed, and, if he makes mistakes they may be corrected by a court which can take all the time it wishes. Next, and as a most important qualification, a trial judge should be a man of broad common sense, a man who understands human nature at first hand, on the witness stand, in the jury box and in the bar.

If, to these qualities he can add broad and deep learning in the law, it is well, and this will fill out the perfect picture and model of a great judge. But I put this qualification last in the order, for the reason that it can better be dispensed with than any of the others. Learning alone will not make a judge; nor even learning joined to high personal character. Something more is needed. The native hue of resolution must not be sicklied o'er with the pale cast of thought. He must be a man of action, with faculties all alive and alert, a man of honest heart and sound head, and firm will, and knowledge of every-day human nature, who successfully presides over the always arduous, and sometimes stormy and exciting scenes of a trial by jury. The greatest judges are born judges, having, like the true orators and poets, the royal commission of nature, impressed with the seal of God himself, to attest their right to discharge the high duties of the bench.

THE PART OF THE JURY—WANT OF RESPONSIBILITY IN JURORS.

I shall say but a word of the part the jury plays in the trial, and that only in regard to the character and duty of its individual members. I have already spoken of it in its collective form and as an institution of the law. The theory of the trial by jury is—and this is held to be its chief excellence by one of its ablest eulogists—that the jury is a tribunal suddenly called from the body of the people to try the facts of a case, and that after discharging that

duty, it as suddenly dissolves and returns to the people again. It is a tribunal, therefore, which offers little time or opportunity for tampering or corruption, before it begins its work, and when that work is done it disappears so suddenly and completely that nobody can hold it to account. I know it is the policy of the law to protect the jury from any civil or criminal responsibility for its verdict; and this exemption from account has given it a freedom and independence most necessary to its highest usefulness. This, indeed, is a great merit in the jury system, but it gives rise, at the same time, to one serious, practical defect, which every lawyer has had occasion to notice. I refer to the want of individual responsibility in juries. It is easy to see how this comes. Each juror is put into the box ignorant of the case which he is to try, and this very ignorance the law encourages, as a test of his impartiality. He looks about him and sees eleven other men, each one as ignorant of the case as himself, and each with a responsibility as great as his own. He has nothing to do but listen; he is not called on to say anything; he is charged to refrain from declaring his impressions to his fellows, even; and when all is done, and the case is submitted, he casts a silent, unrecognized ballot with the rest. Even should discussion arise in the jury room, and he be called on there to express his opinion, the law will seal the lips of all who hear him, so that what he says and how he votes may never be known to the outside world. Under these circumstances it is natural that an indolent or timid juror should fail to give the case an earnest, thoughtful and conscientious attention; that he should sink his individuality in the mass, and hide his own responsibility behind the eleven.

It is for this reason that the law and public duty alike require of every individual juror the full and independent exercise of his own judgment and conscience in every case. I think it would be well if this duty could be emphasized from the bench. The verdict of a jury should stand for the aggregate judgment, intelligence and conscience of twelve men. Of course, under our system, and with the exceptions allowed, it cannot represent the highest intelligence. But with some exceptions, chiefly in the large cities, and growing out of improper and corrupt selections by ignorant or dishonest officers, our American juries are supposed to represent, and do generally, I think, represent the average intelligence of our great middle class. Every man who submits his case to a jury has a right to such a verdict as I have described. That he does not always get such a verdict, we know, and frequently have occasion to lament. It is because our jurors do not feel their personal

responsibility and do their personal duty in a case where they sit, but evade this duty and responsibility in the mass, each hiding behind the other eleven.

It is for this reason that I confess to having always had a measure of sympathy for that much abused and denounced individual, the disagreeing or minority juror. I cannot always bring myself to join in the chorus of denunciation, which is set up over this poor Ishmaelite of the courts. Why should he always be thus assailed? Does it necessarily follow that the other eleven are right, and he is in the wrong? Besides, is there no question of conscience here? It may be a case involving directly a great question of right and wrong; one whose decision is to be followed with consequences which do not simply take away money or property, but blast character, deprive of liberty, or take human life. On such a question is he to follow other men's judgments and take other men's consciences? He has taken a solemn oath for himself to find a true verdict; what shall we do with that? If he thinks the crime not proved, shall he consent to send an innocent man to the dungeon or scaffold on other men's judgments and oaths?

Here is a difficulty which all must see. I know it is frequently aggravating, in small cases on the civil side, and especially on questions of mere damages, to have verdicts prevented, and parties and the public put to expense for the mere obstinacy of a single juror. But while this is so, who shall say that in the larger and graver cases which I have supposed, it is not the juror's duty to stand firmly to what he thinks is right, notwithstanding his fellows are of another opinion? Must he not justify himself to his own conscience? Can we denounce him in such a case, and join in acclamations over men, who in science, in government and religion, have stood out stubbornly to the end against greater odds—not one to eleven, but one to eleven hundred or eleven thousand and more—and who have been exalted to the very heights of honor and fame, and pronounced immortal heroes for the act? Let us not be unjust or inconsistent. The disagreeing juror, by the very fact of his disagreement, shows that he has a mind of his own, and that is a good deal. Commend me always to a man who has a mind of his own and thinks for himself. It is better to think wrong sometimes than not to think at all. In this world of unthinking agreement and conformity, where so many men seem to have no minds of their own, and only wait to see what others think, I cannot help admiring the sturdy Anglo-Saxon independence of the one juror, who stands out against all the rest. It is really refreshing once in a while, to find a man who will sit up all night, without meat

or drink, for his opinion—and keep eleven other men up with him! There is no sanctity about the verdict of a jury. It may be wrong and false like the greater verdicts of a sect, a party, or a nation. Who does not know that whole nations and peoples have sometimes, yes, frequently, been in the wrong, and rendered false verdicts, and cruel verdicts, which have been set aside in the great court of history. The brave minority, which opposed those verdicts, even unto death, have earned the gratitude and received the plaudits of mankind.

THE JURY ADVOCATE—HIS NECESSITY.

I come now to a most important feature in the trial by jury; one not only most essential to it, but of peculiar interest to those whom I address. I am to speak now of the advocate, his necessity, his qualifications and his duty. Here, too, while I have much to say, I must necessarily be brief. The great subject opens out before me in many inviting ways, but I must not follow them too far, lest my hour shall close upon an imperfect and incomplete picture of what I wish to present.

Only a word shall I say of the necessity for the advocate in the trial by jury. I am not here to combat or argue with that ignorant and vulgar misapprehension of the law's justice, which would abolish lawyers and advocates. Widespread as this prejudice sometimes seems to be, it is so utterly destitute of reason, and so plainly gives way before the least reflection, that it never takes any tangible form or shape, but lives only on men's tongues, as a thoughtless and flippant accusation against the bar. It has no solid influence in society or the State. Every man who reflects a moment, will see that an advocate is indispensable to a trial by jury; just as indispensable as the judge, or the jury itself. Anglo-Saxon justice, the justice of the English law, does not condemn a man unheard. It gives him the fullest and fairest opportunity for defense. It will hear what the State or his adversary says against him, and then he will hear what he has to say on the other side. In short, it hears both before it decides. The trial is in a court of law, and it is the law which governs and controls in every case. But the law is a great and abstruse science, and only those who make its study a life work, can understand and administer it. The great body of the people, of course, cannot know or master this science. Hence the necessity for a class of men, trained and educated in the law, whose duty and business it shall be to stand in the courts and assist in the application of its rules and principles to the thousand varying cases of fact, which arise in the clashing of

men's interests, rights and passions, in the daily march and whirl of the world's affairs.

And so in all ages and in all nations, where there has been any approach to civilization, the lawyer has been found. Greece and Rome had him, though they did not have the trial by jury; and indeed, he has flourished in past ages, and flourishes to-day in every country on the globe, where any form of trial is known, so indispensable is he to the very idea of a trial. He is ordained in the justice and humanity of the law to represent and plead for those who cannot, in the very nature of the case, properly or effectively conduct their own cause in the court.

THE QUALIFICATIONS OF THE ADVOCATE.

What are the qualifications needed in the advocate or jury lawyer? I speak here especially of natural qualifications, and those which are acquired in the study and practice of the art of advocacy, rather than of the preliminary and general learning in the law required by the profession. For the jury lawyer, especially, is not made by this general training. He is more a product of nature than of the schools. I do not, by any means, wish to disparage learning at the bar, but learning alone will not make good advocates, else they would be more common in the courts. They are not common; they are rare; and the great advocates are at wide distances apart—two or three at a time, perhaps, in England, or America; a half dozen in a century. Statesmen and great divines, and warriors even, are more common. In their scarcity, and possibly in some other respects, the great advocates more resemble the great actors, who hold the mimic stage, as they so often do the real.

This is because there is a genius of advocacy, as there is a genius of acting and a genius of poetry. Talent and application will make a great statesman like Palmerston, and sometimes a great soldier like Wellington, but only genius, which is far more rare, will make a great advocate like Erskine or Choate. In the same way, the great poets are born, not made. They do not plod, and study, and make poetry at so many hours to the day, as business men work in their stores and offices, but they mount up to the heavens of imagination when the divine inspiration comes upon them. We cannot imagine Shakespeare writing Lear and Macbeth at regular days' works or Byron dashing off his sublime apostrophe to the ocean, or his magnificent description of the mountain storm of Jura, as an allotted task before he should go to his dinner. It was the genius of poetry which took possession of these men and

transfigured their faces and lifted them up into the mountain of song, where they took little note of time, or hunger, or worldly things, until the lofty strain was finished. So Curran stood before an Irish jury, the very impersonation of the genius of advocacy, as, with flashing eye and quivering lips, he thrilled or melted them with thoughts of country or memories of home. No labor of preparation could produce such results; it was the flaming out of pure genius, the most unalloyed and perfect in his case, and in this respect, which has ever appeared at the bar.

But I do not forget that there must be advocates who have not this divine gift, and I would by no means be understood to undervalue learning and preparation in the advocate. To a certain extent, at least, these are indispensable. What I meant to say was, simply, that greatness in this calling must depend on the original endowment of nature; that a great advocate cannot be made by application, however severe; by learning, however profound. I know it is the fashion with us here, in this country, where we have no separate orders at the bar, to attempt all things in the profession and to wander indiscriminately into all its fields. The same man does the work of a scrivener or conveyancer, gives law advice in his office like a chambers counsel, is a practitioner in chancery, a draughtsman, an attorney in the inception and preparation of his cases for trial, and finally the advocate before the jury. Every fair lawyer is supposed to be capable of all these things, and almost every lawyer attempts them all. Now, I think we cover too much ground here, and that this promiscuous employment tends to repress and destroy especial excellence in the profession. In the large cities, it is true, this state of things is somewhat modified, because there men can find enough to do in certain branches of the profession, for which they may be particularly adapted; but it is not so in the country, where the lawyer is expected to do everything, from the drawing of a deed or simple contract, to the conducting of a trial for murder. In a new country like ours, and with the practical difficulties in the way, it may not be possible for us, but I believe the English system is the best. The highest excellence at the bar cannot be attained, where the practitioner does a little of this and a little of that, and never enough in any one line to bring out all his powers. And the work of the jury lawyer is one that especially requires, besides natural adaptation, every day practice and experience. Besides there is something absurd and almost grotesque in its unfitness in a lawyer, whose voice ought never to be heard outside an English court of chancery, standing up before a jury, dry, unsympathetic, passionless, desti-

tute of every attribute of an orator, to plead for a man's liberty, or his life.

I hold eloquence to be almost a *sine qua non* in advocacy. The true jury lawyer ought to be an eloquent man. I do not mean necessarily that he should be a great orator; but he ought to have some of the attributes of eloquence. He ought to be a man of quick sympathy, of impressible and electric temperament; a man to catch the inspiration of a cause and throw his feelings along with his logic into the jury box. Here, I think, is the true secret of the great advocates. It consists in that personal magnetism, that indescribable charm and sympathy of voice and manner which gives them control over the feelings of a jury, and when that is obtained the rest is comparatively easy. With this main qualification, which is largely a question of temperament, the advocate should have a quick perception, good judgment, self-control, knowledge of human nature, and the power to handle facts. This mastery of the logic of facts is indeed one of the chief qualifications of the good advocate. It is what he needs to analyze and detect the weak points of his adversary's case and to arrange and mass his own evidence with the most effective and telling power upon the jury. Put this with that electric and sympathetic eloquence which I have described, and you have a vast power to let loose upon the jury in the final argument; a power which perhaps too frequently sweeps them in its resistless might from the safe conclusions of reason, and sometimes, indeed, from the solid foundations of justice.

ADVOCACY AND STATESMANSHIP COMPARED.

In this brief outline of some of the leading qualifications of the jury advocate I have indicated an order of ability which is necessarily rare. But though rare, I do not consider it of the first order. In its intellectual part it is keen and quick, rather than deep and profound, in its moral aspect it partakes of that which lies upon the surface of human nature rather than that which goes down to the deeper things of the soul. It imparts and reflects the sympathy of the time or the occasion, instead of being always true to fixed and unchangeable moral principles. So I think it takes a higher order of ability to make a great philosopher or a great statesman than it does to make a great advocate. True, the themes of advocacy and statesmanship are very different. The advocate deals with principles in the concrete; the statesman in the abstract. The advocate labors in the courts for the rights or interests of individual men in concerns which are brought directly home to them with intense and

practical power. The statesman in the Parliament, or the Congress, deals with principles and generalizations which affect men in classes, or nations, and have to do with the welfare and prosperity of states and empires.

Thus, the statesman's work is necessarily the higher and more important, and I think it requires the higher ability. This, I take it, would be the verdict of history. There have been some men who have divided almost equally the honors of statesmanship and the bar. Such were Brougham and Lyndhurst, in England; such, largely, our own Webster. But generally the two spheres have been separated, and I may say that, with respect to the especial department of jury advocacy, they have always been separated. No really great advocate has been at the same time a great statesman. This may seem a hazardous statement, but I think it is true. Daniel Webster was a great man before a jury, as he was certainly in the Senate. But he lacked a great many things to make him such an advocate as Rufus Choate, or even Ogden Hoffman. He was too slow, too ponderous, too unwieldy. There was not room enough for him in a trial before a jury. A man like Webster could not bring his vast intellectual armament to bear in such a trial. It does not require a whole army, with its artillery, infantry and cavalry, to capture an isolated point or break through a single place in the enemy's line. A division, or sometimes a brigade, or even a regiment, which can be handled quickly, is better for this purpose. And so, while Webster made a few jury arguments that were masterpieces, still he cannot be regarded as beginning to equal, in his forensic efforts, the splendor of his senatorial eloquence where the themes were greater and grander. And Webster comes as near uniting the two characters as any other name I can think of in our annals. Remember, I am speaking here of jury lawyers. As great constitutional lawyers, to expound and advocate great constitutional questions and the deep underlying principles of the law, which are allied to statesmanship, Webster and Pinckney and some other of our statesmen have greatly shone and stood in the front rank.

But Erskine, and Choate, and Hoffman, and other advocates of scarcely less note, men who have ruled and swayed before the jury, have so lamentably failed in statesmanship that they fully prove my point.

THE DUTY OF THE ADVOCATE—THE OLD QUESTION OF THE ETHICS OF THE PROFESSION.

What shall I say of the duty of the advocate? Surely I come here upon delicate and difficult ground; for I cannot, with my views

of the subject, content myself with the general and sweeping answer that the advocate is to stand in the place of his client and do everything and anything in his name. True, he represents his client, and speaks for him in the courts, and this is well and necessary and wisely ordained in the fairness and justice of the law. But how may he represent his client? What may he speak for him? These are the questions that give us the difficulty.

It is the old difficulty which has troubled the minds of some men ever since the days of Cicero and Quintilian, and even before; the difficulty which Dr. Johnson and the poet Southey have discussed on either side; settled now, perhaps, satisfactorily to the minds of a majority of lawyers and to most moralists, but to some not yet wholly removed. Possibly, nay undoubtedly, the question is aggravated by the almost universal fashion and practice of the bar. The theory of advocacy is one thing; the every day practice of it is often quite another thing. And yet, as a matter of theory, there have always been those inside of the profession who have maintained a doctrine on this subject which, to my mind, is offensive to good morals and especially degrading to advocacy. It is the doctrine advanced by so great a man as Lord Brougham, and practically and conspicuously illustrated by so great an advocate as Rufus Choate—the doctrine of the complete and utter identification of the lawyer with his client.

An over partial biographer of our great American advocate, himself a lawyer, writing with all the ardent zeal of private friendship, and unbounded admiration for his subject, has recorded of him that "his client was his God;" that "his client's interest was his religion;" that "he never inquired whether his client was right or wrong, but he went for victory to the last beat of the pulse and the last roll of the drum." Perhaps this is as offensive a statement of this doctrine as we can find anywhere, connected, as it is in this instance, with the debasement of almost superhuman and angelic powers, but it is elsewhere enlarged and elaborated by Dr. Johnson and other writers into a system of plausible and fallacious refinements of judicial casuistry and jesuitism.

I cannot descend here to details, but I must protest with all my might against this specious but demoralizing view of the duty of the advocate. I contend for a higher, broader, nobler rule. I know that so great an authority as Cicero has said that the first duty of the advocate, is to assist him who most needs assistance; but with all deference to a name so illustrious, I hold that a better rule would be to assist him who most deserves assistance. The theory of a trial by jury is not to clear guilty men who are in

trouble. It is rather to afford an opportunity for the conviction of guilty men and the vindication of innocent men unjustly charged with crime. When guilt is known or confessed there is no need of a trial in the real and full meaning of the term. After that there remains but the just order and the decent formality of the law. A trial is an inquiry, an endeavor after the truth or fact of guilt or innocence. If the client be guilty, then he does not need, in the contemplation of the law, the assistance of the advocate, for the fact of his guilt is the end of all inquiry on the subject, and the end of all interest which the law takes in his behalf. For the rest, it will only demand that the fact of guilt be judicially ascertained, and in assisting to do this the advocate serves the law rather than the criminal.

But here comes the casuists and say: How can it be known that he is guilty until he is proved so? It cannot be judicially, technically known, it is true, but it can be known to the advocate in the broader way and in a moral and popular sense just as other facts are known. It may be known from the client himself; it may be known from overwhelming moral evidence surrounding the case. This is the state of facts I am supposing, and this is the reason why I say that it is not what the client needs to enable him to escape a just penalty which he has incurred, but what he deserves as a man whose guilt is still in doubt, at least, which should command the zeal and the service of the advocate. I grant that the lawyer should not prejudge his client's cause; that he should presume everything, indeed, in his favor. But after all that is done it will frequently happen that the advocate will be compelled to believe his client guilty. It is specious nonsense to say that we can never know that a man is guilty till a verdict of a jury has pronounced him so. We can be satisfied of it sometimes just as well before as after the verdict. We may know it through the same facts which compel the verdict; we may know it better still by the private confession of the accused. Shall the lawyer, under these circumstances, exert himself to the uttermost, using superior powers and skill to obtain a verdict of acquittal for his client, the same as though he knew him to be innocent? Is that a just and proper rule? Is that the true idea of the ethics of advocacy?

I protest against such a doctrine as a wrong to society and a slander upon the law. I insist that the first duty of the lawyer is to society and the law, and that his duty to his client is always subordinate to this higher duty. All this is involved in his lawyer's oath. He is first of all sworn to uphold the constitution of the State. Upon this rests the whole civil fabric of society. Next

he is to be true to the court. The court represents and stands for the sanctity and majesty of the law itself. It is the interpreter and vindicator of the law. Last he is to be true to his client. But he cannot be true to his client in any just sense while he is false to society and the law. That is not the kind of truth he is to keep with his client. His oath pre-supposes no conflict between his client's interest and the interests of the State. He is not sworn, therefore, to help a guilty man whom he knows to be guilty, to escape at the expense of law and justice. If he does this he becomes an enemy to society and a conspirator against the law; for society cannot be held together without the punishment of the guilty, and the law is powerless and dishonored if it cannot enforce justice. Away, then, with the specious plea, the dangerous fallacy, that the highest duty of the lawyer is to stand between his client and the State and protect him always, right or wrong. No doctrine, in my judgment, could be more disloyal to the State, or degrading to the profession. Too much, far too much is this doctrine acted upon at the bar. The indiscriminate and over zealous defense of criminals without thought or care as to their guilt; the unreasonable theories; the unscrupulous tactics; the brow-beating of witnesses; the reckless assertions and the bold affectations of truth and innocence—these are the things which have brought criminal advocacy into disrepute with the people; which have kept so many able, self-respecting lawyers from this department of practice, and made the very term, criminal lawyer, signify want of character and honor; have almost made, indeed, the adjective stand for a designation of the kind of lawyer rather than the kind of practice.

No, the highest public duty is always to the State, and nothing must conflict with that. The lawyer should never forget that he is a citizen. He should never lend himself or hire himself to any service which will harm or hurt society. His noble profession does not require him to do this. It does not demand that he be the unscrupulous aider and helper of ruffians and law breakers, nor a mere unthinking human machine of advocacy. It has other and higher commands for him; other and nobler work for him to do.

Let me not be misunderstood. Every man who prosecutes or defends a civil cause in a court of justice is entitled to the lawyer's help to make a fair preponderance in his favor; every man who is accused of crime must have a fair and impartial trial with the assistance of counsel, and must be acquitted if not proved guilty beyond a reasonable doubt. While, then, the lawyer stands for him in either case, he does it as an officer of the law and of the

court, and under a solemn oath to do his duty to both. If his client is in the wrong and he knows it, I think it is his duty to withdraw from the case, or at most to see only that the forms of the law are complied with, that only justice is done and that no dangerous precedent is set. If next, it be greatly doubtful to him whether his client be in the right, even then, I say, give him the benefit of the doubt and struggle manfully, but guardedly and within the bounds of a due moderation, for his cause. So much is due to the client on the one hand and to the law on the other. But if now the advocate knows, or fully believes, his client to be in the right; to be, for instance, an innocent man unjustly accused of a great and heinous crime, then comes the supreme duty, the highest which man can perform for man. Then let learning and eloquence, and tact and energy, and every power and attribute be put under contribution for the noble work. Stand up bravely, then, if need be, against the menace of power or the frowns of public opinion; let no mobs terrify, no odds appal, no opposition daunt; yield not one inch of ground till driven from it; struggle with tireless and sleepless energy to save a fellow man from a fate so unspeakably awful. This is true advocacy in its noblest form, almost God-like in its character and the crowning glory of the bar. Such advocacy has been seen in the courts, and in many notable instances its courage has been as fine and its chivalry as superb as were ever witnessed on any battle field.

IMPROVEMENTS AND MODIFICATIONS NEEDED IN THE JURY SYSTEM.

But with all its faults of advocacy, and with the many impediments to its fair and just working, the jury system is the best that can be devised, and should be retained. The fine balance of its several parts, necessary to its complete and harmonious movement, is frequently disturbed in practice, and it sometimes seems to fail of its true ends. Like all human institutions, it is not perfect. It may, undoubtedly, be improved, and I think it ought to be improved in some important respects.

In the first place I think it should be improved by changing, in civil cases, the rule requiring unanimity. The frequent disagreement of juries is one of the just complaints against the system, and these are the necessary fruits of this rule. I cannot here go into a discussion of this question, which has already received the attention of law-writers and law-reformers, but it has always seemed to me that the weight of reason and argument was on the side of a modification of the old rule. The question should be looked at in its practical bearings. Whatever the origin of the rule—whether

it came from the number of the Saxon compurgators, or from an old requirement of the agreement of twelve, when the whole number was greater, or from the wish of the law to protect each individual member of a jury from responsibility by requiring unanimity before giving any effect to their action, it should give way to a better administration of justice.

I believe this modification is required and demanded by strong practical reasons and considerations, which are felt every day in the courts. Certainly the requirements of unanimity is somewhat inconsistent with the general rule which prevails in a republican form of government, where the gravest public questions are settled by a bare majority. It would seem, on principle, that if a question which vitally affects the welfare and happiness of a whole people may be settled by the preponderance of a single vote in millions, that a little petty matter of private dispute, between two neighbors, ought to be settled by a two-thirds vote of a jury for one or the other. And no man can doubt that this would directly facilitate the disposition of causes in the courts.

I would not hesitate, then, to make the reform. It is not sufficient reason to me for retaining a bad rule to say that it has prevailed for many hundred years. Because it is old, does not necessarily show that it is right. But while I would make this change in civil cases, and permit a two-thirds vote to carry a verdict, I would not disturb the rule in criminal cases, for there the accused ought to have the benefit of the rule as it stands. The humanity of the law and the reason for greater caution and certainty all require that he should only be found guilty on the unanimous judgment of the whole twelve.

Again, another disturbance of the just balance and working of the system is frequently seen in the wresting of the trial by jury from its original purpose as an investigation of facts and turning it into a proceeding where the effort seems to be how not to find the facts. The utility of this form of trial lies in its adaptation to find the merits of a case by a direct and clear inquiry for that purpose. It is not a place to try questions of law, like a court of last resort, and it should, as far as possible, be kept clear of all legal technicalities and discussions. Our jury trials are frequently burdened with too much law. I know it is often the policy and tactics of counsel for defense to obscure the real issues of fact by raising false issues of law; and many times, too, the effort is successfully made to draw the mind of a jury away from the main and decisive facts in a case into labyrinths of fine-drawn speculations and remote collateral

questions. Our courts should draw the line more tightly and keep closer to the real issues.

It is these long, wearisome, verbose trials, burdened down with remote collateral issues and hair-splitting discussions of legal technicalities, and finally closed by long, jumbled and confusing charges from the court, that produce almost inevitable disagreement of juries. The native common sense and discernment of a jury droop and die in such an atmosphere. From such a trial the average juror comes forth in a bewildered and half-demented condition—almost ready to be sent to a mad-house. It is useless to expect just and intelligent verdicts under such circumstances. One of the chief things which needs correcting in this matter is the judge's charge. I think our recent statutory fashion of giving charges in separate and detached legal propositions, first on one side and then on the other, is a bad one in practice, and tends greatly to confusion. Our judges ought to be able to charge on their own motion, in language so clear and simple that the most ordinary jury could understand. The charge of the court should be clear and consistent with itself, a logical whole, a legal setting for the facts of the case, or the outlining of its legal boundaries, within which the jury are to perform their duty. It should generally be brief, simple and general; it should not descend too much to particulars, and above all it should leave the jury untrammeled as far as possible in their own peculiar field and province.

One further improvement in the jury system is needed to bring it into complete accord with the spirit and progress of our age. I refer to a modification of the old rule of challenge, so as to meet a difficulty which is frequently found in securing an intelligent jury in cases of great public interest or notoriety. The want of a proper readjustment of the rule excluding jurors on the ground of opinion to the actual condition of our newspaper-reading people has, of late, in many quarters become a real scandal upon the law and a great hindrance to its just administration. A general reform is needed in this respect throughout the country. Here, in Michigan, however, with our remedial statute upon the subject, supplementing a wise and liberal construction of the common law rule by our Supreme Court, we have little left to be desired.

ERSKINE AND CHOATE.

Into this arena of the trial by jury have stepped some of the brightest intellects of the world. In the brilliant constellation of advocates who, in the last hundred years, in England and America, have reflected the light and glory of their genius upon the forensic

stage, I would place Erskine and Choate at the head. I do not forget Brougham, and Denman and O'Connell, and the marvelous Curran on the other side of the ocean, nor Pinckney and Hoffman and Prentiss and Paul Brown and Brady on this side. But all these, and many more able and gifted men are fairly distanced by these two great and incomparable advocates, who must stand in their respective countries as the bright, particular stars of the jury forum.

But although Erskine and Choate were almost equally great as jury lawyers, their lives and careers present a series of sharp and striking contrasts. Erskine, the scion of a noble Scotch family, with imperfect early education, and after years wasted in a most opposite and dissimilar pursuit, took up the law when weary and disgusted with the life of an army officer in time of peace. Choate, a New England farmer's son, came early to the bar, after full preparation and worthily crowned with academic and collegiate honors. Erskine never became a scholar, and was never distinguished for learning in the law or wide reading of literature. Choate, in all his subsequent career, was a laborious student and undoubtedly ranked higher in legal and general learning than any other advocate of his time. In the work which these men did at the bar the same contrast is presented. It happened to Erskine to be employed in a remarkable succession of great state trials in which he became the advocate of the rights and liberty of the citizen against public despotism, and in giving the death blow to the doctrine of constructive treason and vindicating the right of free speech and a free press, he performed the noblest service to the law and the free constitution of the empire and won unfading and immortal forensic honors. Choate, on the contrary, was never privileged to argue a single case of great public political importance, but was compelled to use his vast and varied powers in questions of mere private interest and dispute—a circumstance which, in his last days, he recalled with pathetic regret.

So in the splendid and unequaled gifts which each brought to the bar they were still dissimilar. Erskine, who commanded the higher power and the better art, spoke with singularly clear and felicitous language, in sentences short and rich with beauty and strong with logic, and not unworthy of the great models of English speech which he found and studied in Shakespeare, Milton and Burke. Choate, whose learning was deeper and whose vocabulary was wider and ampler, spoke in sentences of remarkable length and resounding sweep and rhythm, and astonished all by the amazing affluence and gorgeousness of his diction. Both were men of

high imagination, but while Choate was more poetical and subtle in his fancy, Erskine was more vivid, intense and practical. Choate dazzled and overwhelmed a jury; Erskine swept and mastered them. Choate more resembled Cicero, who was a rhetorician as well as an orator, while Erskine was more like Demosthenes, who was the greater master of true eloquence.

In their personal appearance and outward manner, also, these great advocates were widely different. Erskine was fresh and buoyant, full of vivacity and of fine and engaging presence; Choate was angular and almost ungainly of form, of pale and haggard countenance, and with only the divine genius looking out from his deep and burning eyes to distinguish him from an ordinary man. Possibly this may account for the fact that Erskine was full of personal vanity, while Choate was singularly modest and unenvious.

But in the midst of these many contrasts, one great and striking parallel stands out in their public careers. Each left the bar for a brief season for service in a legislative assembly, the one in the British House of Commons, and the other in the Senate of the American Congress. Each wearied and failed in the new and uncongenial place; and stranger coincidence still—each met and quailed before a great parliamentary leader—Erskine before the imperious orator and statesman, William Pitt, son of the great commoner of England, and Choate before another proud and arrogant parliamentary chieftain, Henry Clay, the great commoner of America.

Returning now to the bar and the courts, after their legislative failures, the old contrast stands out again in their lives, even to the very close. Erskine went upon the Chancellor's woolsack, for a brief period, and then retired at fifty-seven from the bar and the courts. Choate returned from the senate to the bar while yet in his early prime, and gave thereafter his best powers and most brilliant efforts to his profession. Erskine died at seventy-three, after a long, sad evening to his life, in which he missed the old excitement of the courts and found no compensation in the love of books, that sweet solace of cultivated old age. Choate broke down suddenly at sixty, while yet in full practice, his nerves shattered by the long contentions of the forum; dying prematurely, and missing what he had so longed to enjoy—a peaceful and restful evening to his stormy and laborious life, when he could forget the fiery encounters of the bar in the sweet studies and unfailing delights of the books he loved so well. And so in death the great advocates present their last sad contrast, as each missed the closing

felicity of his life—the one in living too long, the other in dying too soon.

CONCLUSION.

Thus all too briefly and imperfectly have I sketched this great institution of the trial by jury, and, as I turn away from the theme I deeply realize how much is left unsaid. The greatness of the subject has embarrassed and oppressed me. In considering it, our minds run back through many stormy scenes of English history, through many great political changes and revolutions, to the early and memorable days when the foundations of constitutional freedom were laid in England by the first successors of the conqueror. Then and there was begun to be builded the grand and majestic edifice of the common law, and into its solid masonry was wrought the trial by jury. There let it remain so long as the magnificent structure shall stand.

It has been a glory and a boon to England; it is and will be a blessing and a glory to us. No man can safely predict what our national future will be. The events of our recent history have disturbed that easy and boasted confidence in our institutions and our future that once prevailed. I invoke no spectres to rise in our national pathway; I cast no horoscope of coming ills, but whatever the future, whether cloudless and serene or stormy and tempestuous, it will be well to hold on to the trial by jury. We may never have tyrants, we may never have Cæsars, but if we should have them they will seek to accomplish the downfall of free government, not by directly overriding the constitution, but by using the forms of law to strangle and subvert its spirit. No central despotism, no rule of monied or political monopolies can successfully control for tyrannical or sordid purposes an institution which derives its life and power from the great, honest masses of the people. And here will be our safety.

For the jury system is the handmaid of freedom. It catches and takes on the spirit of liberty, and grows and expands with the progress of constitutional government. In England, in the seventeenth century, under the tyranny of the Stuarts, a jury at the instance of a cowardly and despotic king, sent the noble Russell and the brave Sidney to the block for constructive treason. A hundred years later, an English jury acquitted Lord Gordon, and Hardy, and Horne Tooke and Thelwell, on the same charge, although pressed by the whole power of king and government; and a little later still, not all the influence of the ministry, though aided by the savage energy of a chief justice of England, could wring

from an honest and fearless English jury, an unjust verdict against a poor and humble private citizen, who, all unaided by counsel, conducted his own defense.

No; civil liberty cannot dispense with any of her armaments. She needs them all to battle with tyranny and oppression. Trial by jury is one of the chiefest of these. The noble panegyric which Blackstone pronounced upon it in his immortal commentaries is well deserved, and if it be true, as he suggests, that possibly Rome, Sparta and Carthage fell because they did not know it, let not England and America fall because they threw it away.

PIERCE WILL CASE.

Speech of Hon. Chas. S. May, *at Kalamazoo, February, 1876.*

One of the most important, as well as one of the most interesting, civil cases ever tried in the State of Michigan, was the Pierce Will Case of Kalamazoo county. The large amount of money contested for, the great number of witnesses examined, and the peculiar and semi-tragic nature of the facts, all combined to awake in the public mind more than the interest usually created by trials in court.

The case was tried twice. The first trial occurred in June, 1875, and resulted in a disagreement of the jury—eight favoring the contestants and four sustaining the will. The second trial began February 12th, and concluded March 1st, 1876, with a verdict for the contestants. There were one hundred and fifty witnesses sworn in the case, being fifty more than were sworn in the celebrated Vanderpool trial, and thirty-seven more than in the case of *Tilton v. Beecher*. The jury were out twenty-six hours, and what is worthy of note, rendered their verdict upon the twenty-third anniversary of the day upon which the first wife was turned away.

If there is a scene to move and touch the tender heart-chords of a jury more than the destruction of a pioneer's home—the putting away of a tried and faithful wife and mother in her old age, the "over the hill to the poor house," more intensified than in this trial, I have not seen it or read of it. The masterly arrangement of these exciting scenes is in itself eloquent. The ingenuity of

counsel is in the simplicity of his statements; holding the clear mirror up to nature, which reflects the sad condition of *a home in ruins.*

"When Mr. Buck closed, a dense crowd had filled the court room, all anxious to hear Hon. Chas. S. May, who was to make the main argument for the contestants, and who, it was expected, would be more eloquent than ever before in a jury case.

"It was a scene long to be remembered in the history of the court. In the audience were large numbers of ladies, and when Mr. May rose at the close of the short intermission, a silence prevaded the room, which was the forerunner of the rapt attention he received during the four hours which he spoke.

"He was pale, anxious and earnest. Each listener leaned forward to catch his opening sentences. He began slowly and calmly. But soon rousing with his subject he gathered the facts into logical order and, clothing them in eloquent words, wove them into a powerful argument."

Personally Mr. May is an exceedingly attractive speaker—nearly forty-five years old and looking much younger; of medium size and height, keen eyes, dark brown hair, light mustache, deep, strong, penetrating voice. He speaks rapidly and fluently, warms with his subject to a bright glow of oratory, with a peculiar fire of earnest and impressive delivery that is singularly effective with juries. To hear him speaking in any building draws one nearer and holds one's attention with the keenest interest throughout. He has long been a leading advocate in Michigan. He has served as lieutenant-governor, has received the vote of his party for United States senator, and is very prominent as a political orator, whose speeches attract unusual interest.

The argument of Mr. May is of such a graphic and, at times, thrilling character, as well as tersely historical, that it furnishes all the facts essential to a full comprehension of the issue determined at the trial. His positions were believed and followed by the jury.

Mr. May said:

GENTLEMEN OF THE JURY—I cannot tell you how deeply I feel the responsibility which now devolves upon me. As I approach the argument of this important cause and think of the interests confided to me, and how much may possibly depend upon what I may say to you, I am almost overwhelmed with the sense of

responsibility. The stake which these contestants have in this issue is a deep and vital one, and as I stand here now to speak for them, my mind goes back over this testimony to those days long ago, when in summer heat and winter cold they toiled in that early pioneer home, in the midst of privations and discouragements, to lay the foundation of this ample fortune which is now in contest.

Gentlemen, there has never been in the whole history of this court so important a civil cause tried before a jury of this county. This is true, whether we consider the amount at issue, or the intrinsic character of the facts. For this is not only a case involving nearly a hundred thousand dollars in money, but it is one, also, of deep and even tragic interest. It is, indeed, a powerful drama from real life. Put upon any stage, these facts would draw tears from human eyes and stir all human hearts to indignation. Told anywhere under the circuit of the sun to civilized men, they would touch the tenderest chords of human sympathy, and even savage breasts would be moved by them.

Gentlemen, you have a high duty to perform. Not often does such a duty devolve upon a jury. You may all live long lives—as God grant you may—and be honored and trusted by your fellow citizens, as some of you already have been, but you will never meet a greater responsibility than this. It is my duty now to speak for these contestants; it is yours to listen and weigh what I may say. I have often thought that this great feature in the administration of justice was not rightly understood by juries and the public. It has seemed to me, sometimes, that juries and the people at large have regarded the arguments of counsel as an infliction which the law rather permitted than sanctioned, and have therefore turned deaf ears to the bar. But this is not right. My standing before you is no idle, useless ceremony; it is one of the solemn institutions of the law, and as I speak upon my responsibility as an advocate, it is as much your duty to listen to me and to the argument which I shall make, as it is that you should listen to the charge of his honor, when he shall come to deliver it. You have been patient, attentive listeners to all this testimony and all these proceedings for nearly three weeks, and I know that I shall have your candid, patient, careful hearing.

I have invoked such a hearing from you, gentlemen, for I wish to appeal to-day to your reasons, to your judgments, to your understandings. I wish to make an argument to you—an argument founded upon the facts, upon the law, upon logic. I wish to indulge in no tricks of speech. The warning of the counsel was entirely unnecessary. I shall not be betrayed into leaving the

solid ground of my argument to gather any useless flowers of rhetoric, or to indulge in any unwarranted appeals to your sympathy. But it will not be the misfortune of my clients in this cause, if I shall build a highway of reason and logic, over which the sympathies which I know fill all your hearts may be carried to a verdict for these contestants. Happy is that cause where no violence needs be done to the better feelings of our nature, but where the lines of sympathy run parallel with those of reason and of duty.

THE MAIN QUESTION.

Gentlemen, the main question which we have here to try and decide—the question which involves all the others, is this : Is this paper which has been offered in evidence by the proponents *the last will and testament of Isaac Pierce?* In other words, is this a valid will?

Now, there are two broad grounds on which we attack the validity of this will. Though Isaac Pierce signed this paper with his own hand, though it has all legal and due formality, we say it is not his will in the law if, at the time of its pretended execution, he was either not in his right mind, or was under the undue influence of another. These grounds are entirely independent of each other —either is sufficient to set aside the will, and on the question of mental capacity the court will instruct you that the burden of proof is upon the proponents who offer this will. * * *

[A strong statement of mental unsoundness, sickness, old age and accidents, detailed and examined. The story of an early pioneer and his struggle with the great battle in the wilderness, which is familiar to all early settlers in any State.

Counsel argues at length on the theory of mental weakness from long habits of intoxication; of being lifted from his (Pierce's) wagon in a state of unconscious stupor; dwells upon the demented condition of the mind from such causes; shows his anger and remorse, his exclamations of pain and long suffering, and comes to the consideration of undue influence and incapacity to make a valid will.]

And now I come, gentlemen, to discuss more clearly the relations of this woman, Emeline, to these facts. She is the woman in the case; and not the first one, either, who has figured in cases like this and been accused of exercising undue influence over men. Such cases and instances are very common in the courts. They are, indeed, of longer standing than the courts; they are as old as

human nature itself; for I do not forget that, according to the sacred legend, it was the first woman who unduly influenced the first man to eat the forbidden fruit.

I am to show you here the powerful influence of an artful and designing woman over a man of rough nature and strong passions —a woman twenty years younger than the man, and first securing her influence over him through the unlawful gratification of his strong and unregulated passions.

HISTORIC INSTANCES—THE MISTRESSES OF KINGS.

Is there any inherent improbability in such a case? Why, gentlemen, history is full of instances like this—instances where great monarchs and rulers of men have fallen, through the same source of human weakness, under the influence and control of the other sex. Who has not heard of the mistresses of kings and the part they have played in the history of the world? Louis XIV, of France, was called "The Grand Monarch," and "Louis the Great," so splendid was his long reign and so powerful was he among the sovereigns of the world; and yet, though this man was an absolute monarch over France and dictated law to all Europe, sending out his great marshals and armies to victorious fields of conquest, and ruling in his cabinet with arbitrary and autocratic will, he himself was conquered by the charms and blandishments of a solitary woman—a woman without royal blood, a butcher's daughter, who ever after, until the day of his death, exercised supreme influence over him, dictating war and peace—even compelling him in the interest of her religious fanaticism to revoke that royal edict of Nantes, and let slip the dogs of religious persecution, deluging a whole region in innocent blood.

I could give you many more signal instances of this kind. The very next successor of this great king of whom I have spoken, the next Louis in that long line, had his Pompadour, as the other his Maintenon—another woman from humble life, who ruled the ruler of the nation with an artful and unbending will. And there was the English Charles II, with his famous mistress, and in our recent times the wayward and romantic Lola Montez, the dancing girl who came to rule the king in a European court. Shakespeare, who has illustrated all human nature and passion, has drawn a powerful picture of woman's influence in his Lady Macbeth, who urging her guilty but hesitating lord to the terrible deed of blood, says to him—

> "Only look up clear;
> To alter favor ever is to fear;
> Leave all the rest to me."

Why, gentlemen, these counsel say to you, that it is impossible that the wife of this man could have had this influence over him—that Isaac Pierce was a self-willed, strong man. A strong man! Well, was he stronger than Sampson, who could tear down the gates of a city? And yet Sampson, gentlemen, was weak enough when his head reposed in the lap of his Delilah. So it was with Isaac Pierce. Rough and strong as he was by nature, he came at last like Sampson, through the same channel of influence, to obey the will of an artful and designing woman.

ISAAC PIERCE AND HIS FAMILY IN 1852.

Now, gentlemen, let us turn to this testimony and see when and how this influence began. Let me take your minds back to 1852, and show you Isaac Pierce there with his family on the old homestead, at Climax. Married to his first wife in the State of New York, in 1824, he had removed with his young family to Michigan ten years later, and had settled down upon his first purchase of land in the beautiful region where he continued to live during all this history, for nearly forty years, until the day of his death. At this time—1852—he had with him, besides his wife, "Aunt Katy," as she was afterwards called, six children, ranging in years from sixteen up to twenty-seven—three boys and three girls. He was now about fifty years of age, and the possessor of eight hundred and fourteen acres of land—eight hundred and sixty-nine acres being all he owned at the day of his death.

The story of this family had been like the story of other pioneer families in this region, only a little rougher and harder. They began with little and they worked hard, boys and girls alike—the daughters and the mother frequently working in the fields with the men, and the testimony many times shows us "Aunt Katy" bringing with her own hands the family wood from the field to the house. "We all worked hard," say these children on the stand, and so testify, also, all the witnesses who knew them in those early days. Isaac Pierce at this time, though a rough, austere man, seems not to have been an unkind father, and he was well disposed towards his family. Drinking had not got to be so settled a habit with him and he worked hard with the rest. He had overcome all the difficulties of a new country; had brought his family safe through all the trials and dangers of that new home; his judgment had been good, his plans had worked well, and he was a man now in easy circumstances and comparatively rich among so many of his less prosperous neighbors.

THE BEGINNING OF TROUBLE.

But a great trouble was about to fall upon that quiet and peaceful family. In the late summer of that same year 1852, Isaac Pierce met this woman, then Mrs. Emeline Hadley and an interesting young widow, in her mourning weeds for her husband, who had suddenly died in the month of July, in the town of Penfield, in the county of Calhoun, which was their home. She met Pierce at Battle Creek—it seems she knew him, at least by reputation, before—and applied to him to become administrator of her husband's estate. He seems to have been struck with her person and her request, and at once undertook the duty. And then commenced his relations and intercourse with her, destined to change the whole course and current of his after life. He began soon to make visits to Penfield, which were frequently repeated, and we catch a glimpse of him defending her law suit at Battle Creek.

SIGNING THE SEPARATION PAPERS.

Pierce is soon infatuated, and nothing can now stand in the way of his dreadful purpose. All his ungovernable passions are roused, and he turns fiercely upon the wife of his youth as an obstacle in the way of his new and unholy desires. You remember that in the solemn night time, the youngest child, Lucinda, had heard her father's voice, in high and terrible words, demanding that her mother should consent to a separation, and leave her home and children forever. At last by the most terrible threats and commands—by the use of language too shocking and awful for me to repeat, he compels her to come to Kalamazoo, where this same George Thomas Clark, the adviser and tool of Pierce, had drawn up the separation papers for her to sign. You remember these papers, gentlemen, with their false and lying preamble, "Whereas, unhappy difficulties have arisen between the said Isaac and his wife Catharine." What difficulty had *she* made?

The wretched wife could not at first sign the papers. She took the pen, officiously put into her hand by Clark, and then burst into tears, saying she could not do it; "she could not sign away her home and children." The superserviceable Clark is ready to urge her; to tell her of his brother's case in England, and how that was managed. Pierce stands by, over-awing her by his presence and by the stern and unbending purpose which she sees written in his face. At length she yields, takes the pen, signs her name and turns weeping and sorrowfully away. Then, with a heavy

and broken heart, she returns for a brief season to the home where she had worked so long and endured so much for her husband and her children.

It was in the month of November that Pierce brought Mrs. Hadley into his family at Climax. Up to this time, these children tell you, Isaac Pierce had lived peaceably and pleasantly enough with his wife. But a terrible domestic cloud had now begun to gather. Quarrels and high words began to be heard by the affrighted children between the father and mother. Pierce leaves his wife's bed; he makes no conversation with her; he does not treat her any longer as his wife, but installs Mrs. Hadley at the head of the table, and is even found in the night time sharing her room and bed. Aunt Katy passes around uncomplaining, but sad, and frequently in tears.

THE CULMINATION OF THE TRAGEDY.

Finally the awful climax of her troubles comes—the day of fate and doom to this poor woman, when she is sent away forever from her home; taken away by the orders of this infatuated and infuriated man, who had once solemnly sworn at the altar to love and cherish her; taken with a few cheap and humble articles of household furniture and sent, by a back way, over the hill to the little log house in the hollow which was to be her future abode; taken while protesting and crying out in the agony of her soul that she could not go—that she could not thus leave the home she had worked so hard to make, and the children she had nourished and loved.

How can I picture to you that scene of domestic desolation and ruin—that terrible scene of a wife's dethronement and banishment? Gentlemen, I have heard the great actors and tragedians of this generation who tread the mimic stage and thrill and melt excited thousands with their delineations of human sorrow and passion, but I have heard from the lips of Lucinda Milliman, on that witness stand, the story of a real tragedy in humble life, more pathetic and powerful than any imagined grief of kings or queens, or any catastrophe whatever of human greatness. That agonized wife and mother in the midst of her weeping children; her tearful protestations and pleadings—the demoniac husband and father standing by, lost now to all feelings of gratitude and pity, and hurrying up the cruel preparations for her departure—oh! gentlemen, it was a spectacle to make the blessed angels weep! Well might the wretched mother have cried out in the homely but pathetic language of Michigan's own poet:

"Over the hill to the poor-house—my children dear, good-by;
Many a night I've watched you when only God was nigh;
And God will judge between us; but I shall ever pray
That you may never suffer the half of what I do to-day."

Gentlemen, a scene like this must melt and move all human hearts. It brings to our minds that other scene enacted upon a royal stage, between crowned heads, over which the world has hung and wept for years, where a great Emperor put away the wife of his youth—the wife who had loved him and helped to place him on his throne. That separation and banishment have come to be one of the touching stories and tragedies of history; but human nature is the same in farm house and palace, and this tragedy in humble life appeals as spontaneously and powerfully to the deepest and tenderest sympathies of all our hearts. How overmastering must have been the influence to drive this man to such a crime; how cool and calculating the disposition of this woman, Emeline, who could look calmly on and witness it! I turn to you now and ask you this all-important question: If this woman who sits here could make Isaac Pierce do such a deed as this in the day of his strength and prime, could she not influence him in the day of his weakness and decline to make this will?

Gentlemen, this was a horrid piece of business—blasting and withering to the good name of the living and the dead alike. And yet I have heard here a wretched plea in defense of it—a plea put forth by this guilty party to it—the plea that the banished wife was not neat and tidy in the management of her household! God of mercy! what a defense is this! Was it not enough for this poor old woman to suffer, to be exiled and driven from her home, to be crushed and outraged in her deepest affections, to have her life blasted by this great grief? Was not her cup already full? Did it need that this insult should be added to all the rest before she dies? And what do you think, gentleman, of that disposition which prompted such a plea as this? "Aunt Katy worked hard"—"she labored faithfully for her husband and children"—"she backed the wood up to the house"—"she did the best she could." That is what the witnesses say.

"She did as well as she could," reluctantly says one of the witnesses who comes here to heap this insult upon her old, gray head. Who could do better than that? And was Isaac Pierce, from this testimony, the man to complain of untidiness in his wife? Gentlemen, I dismiss this wretched plea without further words. The proponents are welcome to all they have made by it.

Gentlemen, the influence of this woman over Isaac Pierce was

never broken during the twenty years she lived with him. Once having secured her control over him he was submissive and obedient to her slightest wish. * * *

He recites the testimony at great length, reading from notes and repeating from memory, giving a graphic analysis of character, appearance, and probability of their correctness of detail, and proceeds:

Now, gentlemen, I think that you will agree with me that here is a very considerable mass of testimony tending to show the possession of a strong and powerful influence by this woman over this man. The question naturally arises now: Did she exert this influence upon him in order to obtain this will?

In the first place, I ask you, gentlemen, what would be natural and probable in such a case? Consider her situation and that of her children by Pierce. Consider the grave legal questions and doubts which might arise in regard to her true relations to him and to his property; to the legality of her marriage; to the legitimacy of her children. Under such circumstances what would be natural for her to do? Would she not desire, above all other things, that Pierce should make his will and thus settle these grave questions and doubts forever, and confine the property to her and her children? Remember, the other wife was still living, and her children, these contestants, were all about her.

Why, gentlemen, human nature itself answers these questions. This woman could not have been true to her own interest and to the interests of her children, if she had not exerted her uttermost power and influence to obtain a will such as she needed for her protection. Do you believe her when she swears that she never spoke to Pierce in her life about a will, and did not even know what he was coming to Kalamazoo for when the will was made?

Gentlemen, on this subject, it is a most significant fact that this will *is* made in the interest of this woman and her children, and that, too, in the very face of all these declarations and expressions by Isaac Pierce of a contrary intention. What do you suppose induced him thus to forget and deny his own words, to forget his duty as a man and a father, and to disinherit his own blood? What power drove from his mind the remembrance of these more than orphaned children of his unfortunate daughter, Mrs. Parish? Ah, gentlemen, this is not such a will as he told Dr. Babcock, on what he thought was his death-bed, he wanted to make.

"TO KEEP PEACE IN THE FAMILY."

No, gentlemen, this will was wrung from Isaac Pierce in his old age, in his weakness, in his sickness, in his intoxication, by the ceaseless and persistent importunity and authority of this woman. Against her oath, denying all this, saying she never spoke a word to him on the subject, I put the oft repeated declarations of Isaac Pierce himself; I call him from the grave to confront and impeach her. You will believe him when he tells you that this will was not his, but hers; that it was made to please her and get rid of her ceaseless importunity—"to keep peace in the family."

How many times did this old man use that expression, as he complained, in the bitterness and sorrow of his heart, of his domestic troubles? Besides the many other things which he had to do "to keep peace in the family," was the making of this very will. Your have seen how, for this purpose of keeping peace, as he himself said, he wanted his son Loren to pay him the thousand dollars for the land, telling him he would pay it back to him; how, according to the testimony of the venerable Moses Hodgman, he exacted the mortgage from Milliman and his daughter, privately assuring them that they would never need to pay it; how he took the note from his other son-in-law, Clark, telling him it did not need to be stamped, as he only wished it to satisfy his wife. In all these instances he used this same expression, "to keep peace in the family." But, more than all this, he told John Christol, in May, 1871, that he had got to make a will to suit his wife—"to keep peace in the family." He told Ephraim Bonner, in the month following, that he was going to make a will to suit Mrs. Pierce and "to keep peace in the family." And, finally, on the evening of that very twenty-ninth day of July, when returning from Kalamazoo, he told George Whiting, at Galesburg, that he had been to town doing some business "to keep peace in the family," that he had "signed the death warrant of his first wife and children." How significant and impressive is such testimony as this!

Again I ask you, gentlemen, can you doubt that it was the influence of this woman, her importunity, her demands, her authority and control which induced and coerced this weak and worn out old man to make this will? She was twenty years younger than he; in the full vigor of her prime—a keen, artful, self-poised and calculating woman, as her whole appearance on this trial abundantly shows. She was just the woman to hold with a steady and

iron grasp the power which, long before, she had acquired over this man.

NO RATIFICATION OF THE WILL.

Need I say to you, gentlemen, that this will, once made under these circumstances, could never be ratified by Isaac Pierce. I know the counsel on the other side have made this point, and they will ask the court to charge you that you may find a ratification of this will by Pierce, no matter under what circumstances it was made.

Now, I take issue with the gentleman, most decidedly, on this question, and I say in the first place, that, as a matter of law, there could be no such thing as a ratification in this case. And, for the simple reason that if this paper was signed by Isaac Pierce when not in his right mind, or when intoxicated, or when under the influence of another, then it was not his act in the law, it was not his will, but was void, and of no effect whatever. It is void, in such case, because there is no consenting mind or will. Certainly, I must be right in saying, that if this man signed the paper when his reason was dethroned, or when his mental faculties were drowned in liquor, and when he had no such sound mind and memory as the law requires, that then his act was void, and being void, that the law, and reason, and common sense, all would unite that he could not afterward, by anything he might say, give any effect to that which was wholly without effect and worthless in the beginning. The law is always founded upon reason and common sense. A man may ratify an act which he does while under some legal disability; as, for instance, a contract made before he was twenty-one years of age; but he can never ratify that which he never did. In other words, in all cases of what the law calls ratification, it is always supposed that the act was an intelligent and conscious one, and that the disability was only from the outside. So I say that here there is no question of ratification at all. It is a misnomer and an anomaly to say that there can be any such thing as the ratification of a void will.

But if it be urged that Pierce could ratify the will if it was simply made while under undue influence, then to this, in the second place, I reply that, as a matter of fact, the testimony shows that the influence of this woman was a continuing influence; that it remained and was never broken while this man lived. So the answer is complete and as broad as the proposition. For, if the influence was so great as to be undue in law at the time when the will was made, then, before he could ratify the act of making it, he must be

shown to have escaped or recovered from this influence, and to be in a situation where he could speak his own mind and exercise his own free will. When, I ask you, is this time proved to have been?

But, gentlemen, the court will tell you that there can be no such thing as a ratification of this will, that it must stand or fall upon the man's condition at the time it was made, and that nothing he could afterwards say or do would breathe the breath of life into this paper, if, at this time Isaac Pierce was not in the possession of a sound mind and memory, or was unable to exercise his own free will. Something cannot be made out of nothing; nor can so solemn and important a paper as a man's last will and testament, which the law requires to be in writing, and duly and formally declared, attested, signed and sealed, be revived from legal disability or death by a mere informal or casual verbal acknowledgment, made in reckless, blasphemous, or drunken speech.

THE WILL UNNATURAL AND UNJUST.

Gentlemen, there is still left one great test or principle to apply to this will in order to see whether it be the solemn and deliberate act of the testator—and that is the test of its humanity and its justice. I know a man has a right, under the law, to make an unjust will, but I know, too, that when the question is whether he has made a will, and that question be at all in doubt, you may look into the provisions of the instrument itself to see whether they be contrary to natural justice, so that it may be determined whether the man would be likely to make such a disposition of his property. A will that is inhuman and unnatural is at the same time unreasonable, irrational and improbable.

I have therefore, gentlemen, the right to urge this consideration upon you and to ask you to look to this question of justice. Need I take one moment to show that this will is grossly unjust? Here are these children by the first wife, this man's first children, who helped him to accumulate this property, practically disinherited, their mother turned out of doors, while this woman Emeline, the tempter and destroyer of this home, and her children, who have never earned or added anything to the estate, are given everything. Why should Isaac Pierce thus forget these older children? They had worked hard for him; they were poor and needed assistance as he well knew, and he had no feeling against them. Why should he cut them off in their poverty?

Why, gentlemen, all this evidence shows that these contestants had been most generous and forbearing in their conduct towards

their father. They had always been respectful to him—even when his life had been such as not to command respect from the world; they had been kind and attentive to him when suffering from accidents or sickness; and finally they exercised a degree of forbearance when their mother was sent away which seems, at first view, almost shocking to our human sympathies. The counsel has dwelt upon the fact that some of these contestants assisted their father in procuring the Indiana divorce from their mother. They did this, no doubt, thinking it was better than the open shame and danger of his living in adultery with this woman in the midst of a community excited and threatening a prosecution; but without this plain and perhaps sufficient motive which I can plead in their excuse, the fact remains that they rendered a much needed service to their father.

Why should Isaac Pierce forget all this when he came to make his will? And there was his poor, unfortunate daughter in the asylum, and her helpless and more than orphaned children whom he loved and whom he told Dr. Babcock he intended to provide for. Why should he forget them? Ah! gentlemen, these questions cannot be answered satisfactorily on any ordinary principles of human nature or natural affection. He could not have forgotten these claims upon his bounty and his gratitude if he had been in his right mind or in the free exercise of his will.

O! it needed all the audacity of the counsel to say that this will was just. Gentlemen, the argument is an insult alike to your reason and your humanity. If this be a just will, then where can one be found which is unjust? If this be a humane and a natural will, then where can be found a will which is inhuman and unnatural? Look, gentlemen, at these opposing parties before you. Here, on the one side, are these contestants, the first children of Isaac Pierce—the poorly clad and hard-working boys and girls of that early, desolate home—now past middle life, some of them verging towards old age—browned and bent by toil, in rusty and homely garb, still hard-working and poor; cheated and deprived of their just inheritance, which now they so much need, by this relentless and grasping woman who brought calamity and sorrow into their father's household. There, on the other side, sits the author of all this trouble, surrounded by her daughters, the later children of Isaac Pierce, dressed in all modern extravagance and finery—gay, frivolous, useless, modern young women, reared in luxury and educated at boarding schools. Tell me, which of these twain have earned the right to enjoy this property?

CONCLUSION.

Gentlemen, this man violated the physical and the moral law alike; and he reaped the terrible penalty. For that great wrong to the wife of his youth his remorse was keen and lasting. It breaks out here and there, frequently, through the testimony. How touching and overwhelming was that incident related by Smith Lawrence, when Pierce passed his wronged and injured wife on the highway as the sun was setting, and gazing after her, exclaimed, as the tears came to his eyes: "I would give all that I am worth—I would give the whole town of Climax if I owned it, if I had lived with that woman!" There was conscience—there were the scourges of memory at work. At last, bent and broken under the heavy load of moral guilt, of violated physical law and domestic trouble, with mind impaired and shattered, and confused by drink, under the powerful influence of another, he put his unsteady hand to a will which outrages every sentiment of human affection, and controvenes every principle of natural justice.

Gentlemen, it is your solemn prerogative now to correct and repair this terrible work. You must set aside this wretched mockery of a will. Let this man's property descend to all his children—to the deserving and the undeserving alike. These contestants will then only share equally with the children of this usurping woman, and she herself will remain the dead man's widow in the law, to the exclusion of that early, lawful wife, who still lives to suffer from man's injustice. What more ought these proponents to ask or expect?

Gentlemen, I beg of you to pause and reflect before you render a verdict sustaining this will. You have it now in your power to do a great and supreme act of justice—an act noble and God-like, and worthy of your sympathies as men and your oaths as jurors. It is the glory of a jury to be able to execute some portion of that justice which belongs supremely to God—to vindicate the cause of the weak and oppressed, and to blast and shatter the power of the oppressor. In the name, then, of common justice and humanity, I appeal to you for a verdict for these contestants. Let no preconceived opinions, no prejudice, no obstinacy in your jury room, no specious pleas of any kind, keep you from this high duty. For in doing this you will be true to your oaths, true to the law, true to what this dead man would say, could he now speak to you from the grave, and true to the eternal principles of justice and right.

[Mr. May's speech covered fifty-four pages of closely printed matter, necessarily condensed for this purpose. The will was broken.]

THE FARMAN-WARD TRIAL.

Held at Detroit, November, 1867.

In this trial Senator Jacob M. Howard made his last appeal to a jury. It is very brief, many of the circumstances being lost for lack of a stenographer's report. The facts, as preserved, will be read with interest by all who appreciate oratory or know of the distinguished advocates who participated in the investigation of the tragedy.

The strong confidence of counsel on clearing their client by public opinion is a marked feature of the defense. Their theory was based upon the common sense of the jury and the right of protection that a brother could render an orphaned sister. The boldness of the appeal made for young Farman was heroic. The story of the case is almost incredible.

In the early evening of October, 1865, while Captain John P. Ward (a vessel owner), was walking the streets of Port Huron, in company with his friends, he was suddenly confronted by defendant Farman, a boy of sixteen years, who fired three shots at Ward, wounding him fatally, death resulting on the 22d, some days later.

Previous to the shooting, Ward had taken charge of Farman's little sister, of near fifteen years of age, to take her to Detroit from Lexington, and (as Farman believed) seduced or outraged the girl on the hurricane deck of Ward's steamer. The child being unattended, of weak mind and tender years, made the facts extremely revolting.

Before the shooting, an examination was had, and it appears Farman feared Ward would be released and go free. Threats of that were freely made, and that no justice would bind him over. This, coming to Farman, led to the homicide. Further facts will appear in graphic form through the ingenious statement of counsel.

The language of Hon. G. V. N. Lothrop is terse, and at times powerful, as the brief selections will show. He began by saying:

The act carries its own commentary. It is not the brutal killing of an assassin. It frames a vindication in the minds of every right-minded man and every pure-minded woman. I never had a more grateful task in all my professional services than that which calls upon me to express this before you. We would not willingly drag the turf from the dead shame; we would leave it to time and oblivion. But in behalf of the living and the dead, and in behalf of justice in the case of this boy, I rejoice to do my duty. The charge is murder, one of the highest offenses against God and man. Look at the prisoner. Does he look like a murderer, or dangerous to society? What is there in the act of the boy that speaks of a wicked and malicious heart? Look at him; you see him moved by a great cause. You see before you his little sister, tender beyond her years. You see him with his widowed mother; you see the affliction of the family. There never was a more touching story in itself told anywhere. What is it that brings this boy to a bar of justice to answer for a crime? What brought him here to-day? It is the old, old story. A tragedy of wealth and pride that time has been repeating over and over again, and will as long as the world shall stand. This pride and wealth and lust learns its lesson slowly and hard. We see many of them in history.

Twenty-five hundred years ago, when Brutus bore aloft the bleeding body of Lucrecia; when the people of Rome tore down the kingly throne, and the brutal emperor barely escaped alive, I dare say some satellites of Tarquin said this was murder; I dare say some senator might have protested against the aggression on the kingly life, but that is lost in history and the roar of the Roman people. We are told that the peace of society has been periled because a young Tarquin met his Brutus at the hands of this boy defendant. Our society! has it been less protected, less secure, gentlemen of the jury? For six months he has been liberated on bail, by one of the most esteemed judges that ever graced the bench, and we see no danger. Since he has been at large in his humble and quiet pursuit, who has noted danger? Is it not quite the reverse, gentlemen? You know the peace of society has not been periled; but a feeling of satisfaction has come to tell us that the ravisher in this community shall not go unpunished. Was there horror at the killing of Ward? The horror belongs to the other part! Murder is killing a human being in the peace of God. Was he in the peace of God? He that had invaded the sanctity of this poor girl's honor, was struck down by the noblest passion that can animate man! An act for which every virtuous maid and matron in the land should crown him with wreaths of laurels!

Hon. A. B. MAYNARD spoke eloquently for the defense, often in that peculiar vein of homely sarcasm that moves a jury more than logic:

Counsel have cited ancient cases; so will I. There was the case of Simon and Levi in thirty-fourth chapter of Genesis. Levi had a beautiful sister, and Shechem, who seduced her, was a pretty respectable sort of a fellow, for he said to Jacob, her father, "Ask me never so much dowry and gift and I will give it." But Levi was still angry at the outrage, and said, we cannot do this thing; we cannot give our sister to the uncircumcised; and finally they were circumcised, and while they were still sore, Daniel fell upon them and slew them and took their sheep and cattle, and confiscated their property in good fashion. And Jacob thought it over and said to Simon and Levi, "Haven't we been a little severe in this matter?" and the boys said, "Father, shall this man deal with our sister as an harlot?" and Jacob subsided and said, "You served him right."

There was another case, of David's son Amnon, that pretended to be sick, and had his sister Tamar sent in to prepare his meat. And Tamar took flour, and made cake in his presence, * * * and he forced Tamar, and outraged her. She protested and entreated, and all to no purpose. He insisted, and when he had done his devilish deed and turned her bodily into the street, he laughed about it and treated it as a huge joke.

But Absalom, his brother, heard of it. He suppressed his wrath for two long years, and then, at a sheep shearing, while Amnon was merry with wine, they rushed upon him and slew him. And what did David say? "When he learned that Amnon was dead, he was comforted." He knew he was not fit to live upon the earth. And this is from our good book, the Bible. Why, gentlemen, can you conceive of a case so outrageous?

Take a girl of twenty-five or thirty, it would be bad enough. But take a feeble child, who is put in the custody of one almost as her guardian and protector, and seeking a dangerous place, away up on a hurricane deck, to accomplish his hellish purpose! blasting her future life, and carrying ruin upon her heart-broken mother, widowed, poor, and unable to bear the anxiety of a trial like this! I tell you, gentlemen, nothing could sting the heart to madness as this transaction. And when you think of a strong man taking a timid girl upon that high deck, with a lie in his mouth, saying the air was better, that she would find company up there, and surrounded by his minions and crew to guard his dreadful deed; and say, when such circumstances are brought home to a brother, it is

as though he caught the villain in the act; and in view of the degrading deed, and in view of the shielding the ravisher from the penalties of such an atrocious wrong—in the name of God, what more would you want to madden and craze and provoke one more to the deed he did? I ask you, if that would not carry his passions beyond his control, what would? If he had approached your sister, in the commission of the deed, would you not strike him to death on the moment, on the spot, and every man of you say "Amen?" * * * If he had happened along in time to see the outrage, would you claim that he ought to be prosecuted? * * * He had heard her story. He had heard Ward was going to escape. The scene came up in all its consequences. * * * And we all know, in deep affliction, there is no great outburst of feeling; there is a quiet surface, but a determined act. Can you believe this poor boy's mind was free from it, night or day? This outrage on his only sister, of tender years, looking to him as her protector? Night and day, from that fatal time, he carried his sorrow, his emotions, till again and again he sees the deed in all its horror; sees his family disgraced, and the villain go free! I say it was too much for his reason, his judgment, and his self-control! And he broke down under it all; and it is for you to say, whether, under the facts, you will pronounce him a murderer! * * * *I say, and say it solemnly, and say it meaning what I say, if this boy was a boy of mine, I would thank God that he had the manhood to pull the trigger that sent the bullet which gave John P. Ward the downward pass to his final home!*

Farman's case was finally abandoned, although this jury stood eight for conviction and four for acquittal.

An incident in the above case may be added. Counsel pressed the cross-examination of Farman to great length. Mr. Lothrop objected, as it might tend to prejudice defendant. Judge Walker directed that the question should be answered. Mr. Lothrop said, "Don't answer." "*Answer!*" replied Judge Walker, sternly. But the witness refused, and a scene of confusion followed, but no answer.

After the jury retired, Mr. Lothrop was called up and fined ten dollars for contempt, being severely censured by the court, to which he said, "The *peculiar circumstances* of the case places me *beyond the power to compete with the extreme language of the court!*"

He had supposed his whole duty was to protect his client from harm in every way possible. He would not appeal, but he knew of

no precedent that would, under like circumstances, censure the act he had attempted in good faith. He continued at length, to the amusement of the bar, who evidently were clearly on his side.

A passage at arms between Counselors Lothrop and Howard occurred at the closing of Mr. Howard's address for The People, that is an excellent specimen of the distinguished advocate's power in reply. Mr. Lothrop had said to the jury: "It was an act, gentlemen, for which every virtuous maid and matron in the land should crown him, with *wreaths of laurels!*" Coming to this point, Senator Howard, in his massive, Websterian style, said: "How did he kill him? He shot him! Where? In the back! While he was down! Three times in the back! Shot him again and again, the young assassin! Yes, the young assassin! (hissing it with tremendous force.) And *this was the act* for which my brother would have every virtuous maid and matron in the land *crown* him with wreaths of laurels!" The effect was electric.

It is regretted that no report can be had of this extremely ingenious and effective speech. Mr. Howard's rare faculty lay in *convincing a jury.* He had been prosecuting attorney and attorney general, as well as representative in Congress and senator, when this, his last jury argument, was delivered.

He spoke with force and fervor, in gesture using mainly his right hand. There was a measured rhythm of his strong sentences that broke down all little points, and sent conviction directly to the hearts of the jury. In this trial he was aroused to his very best. With every element of sympathy against him, he prevented an acquittal.

TWENTY-ONE RULES OF PRACTICE.

Book knowledge of law is like a chest of fine tools in the hands of an unskilled artisan—useful, but impractical, without experience. Practice in law must be largely learned from contests in courts. It is the lawyer's trade; the more he has of good practice, the better he will know how to apply his learning.

To have the keen tools, and the well learned trade, both at command, may make him an accomplished workman. No arbitrary rules of study can be laid down, as few follow the whole field of law, and more adopt some specialty, and read accordingly. From

observation, practice, reading, attendance at courts, in different States, and counsel with able attorneys, the following rules, with reasons, are given as aids and suggestions in general practice.

The general rules of practice may be confined to twenty-one, and by careful attention to each, great advantage will be gained over a hap-hazard method of trials, without any fixed purpose in examination of witnesses or argument to a jury. They may lead to winning five extra cases a year.

Rule I.

Study every case by itself thoroughly, and make a clear brief of both law and evidence.

No musician will undertake to execute new and difficult music before a public audience without knowing what it is, and how it sounds; he will drill on every note until he masters each inflection. Actors rehearse before every play. Horses are scored, trained and practiced before every race. Boxers, wrestlers, racers, walkers and oarsmen never start off-hand. It has been told again and again, that the best trained athletes were the most likely to win; why should lawyers be an exception?

A lawyer in court without a brief is like a captain at sea without his chart; a driver without a tried horse; a marksman with an unknown gun. But one with a well-mastered case is strong in every muscle; indeed, his victory is over half accomplished.

Rule II.

Know what each witness will swear to, separately, and together.

It often happens that, in criminal cases and family quarrels, witnesses are separated after the manner of the well known trial of Susannah and the Elders, given in the Bible, where, on the first hearing, with witnesses all present, it was shown that Susannah was guilty, but when all of the witnesses were excluded but the person testifying, two material points crossed each other: the one Elder swore to an offense under the olive tree, and the other to the same offense under the mulberry tree!—each on opposite sides of the garden! Susannah went free, while her accusers were executed.

Show each witness *the importance of candor;* of holding to the truth, and talking in a reasonable manner, with facts and circumstances so woven together as to secure confidence. I remember an assault case, where an eye was put out with a poker, made from a shovel handle. In the doctor's statement of why he knew it was that way (instead of a fall on the zinc platform, as claimed by

defendant), he showed that the soot in the wound from the poker appeared like butter cut with a rusty knife, which convinced him, and it convinced the jury, who gave heavy damages to the plaintiff.

Rule III.

Open the case fully before any evidence is in.

Whether the plaintiff or defendant, the claim should be known, and fastened in the minds of the jury, from the start. If for the plaintiff, a careless, half heedless statement is made, little importance will be attached to the suit until it opens itself, as it were, and, in such cases, juries often take an early prejudice that requires a great amount of evidence to remove. It is, therefore, very essential to success that a terse, clear, and forcible opening be made, and one that is comprehensive and interesting to a jury.

Especially is this true in criminal defenses, where, by an even start, the jury may carry a favorable impression of facts in the prisoner's favor, that will come with double weight if opened early in the trial. Experience shows that little is ever gained by a smothered defense. The People's side is, of course, well known. The defendant, if brought in fresh from the jail, comes under a cloud; suspicion is cast upon him by the mere force of circumstances, and many believe prisoners guilty simply because they are under arrest. It is of the utmost importance that not one word of evidence be heard in such cases before a full, earnest and candid opening is made for the defendant. Courts always permit it, and often encourage it. This style of opening has a double advantage of allowing counsel to tell the worst that is likely to be established against the defendant, with his answer thereto; creating an impression that, even with such damaging circumstances, the prisoner is not guilty. It is not the duty of defending lawyers, however conscientious, to convict their clients; such is the province of a jury, and, if ever so guilty, the counsel for defense does his whole duty to present his client's case in a clear, convincing way, that, with the People's side equally well managed, The jury may reach a decision based on the law and evidence, fully, clearly and evenly explained. An exception to this general rule will be in cases where the defense is made wholly from the weakness of the plaintiff's evidence, or from cross-examination.

Rule IV.

Be forcible, firm, dignified and clear.

A jury will not be long in reading between the lines, if counsel lacks force and earnestness of manner, and an interest in his client. For days and months, both parties to the suit may have carried their legal trouble at home, and at work, like a leaden load, dreamed of it nights, and pondered over it hours together, until their heads would ache with anxiety. To such, a tame or wavering presentation of their side of a suit is more than human nature can endure, and is sure to lose a client, if not the case on trial.

A firm and dignified bearing will be impressive alike to court and jury, and add respect for your argument that never comes of "shilly-shally," and frivolous statements. The business of lawsuits is to adjust differences, protect the helpless, enforce rights, and punish wrong-doers—it is serious business. But above all, says an old attorney, BE CLEAR. Many jurors are ignorant of long words; they do not comprehend the real issue to be decided; some understand English imperfectly, others reason in a slow, roundabout way, and reach conclusions after a long study and much meditation. Witnesses may be confused by a lack of clearness. It is a good plan to see some experienced juryman, early after a trial, for a few trials at least, and ask, how that case was presented. In nine out of ten cases he will say, you ought to have made this or that point a little plainer. The jury did not understand it fully.

Rule V.

Never be bluffed out of Court, but do not begin the bluff.

Once in court stay in, and be an opponent, as Shakespeare well describes through Polonius: "Beware of entrance to a quarrel, but being in, bear it that the opposer may beware of thee!"

Some men will fight all the better by being thrown down a pair of stairs; some take to the woods at the first show of battle. Clients, suitors, juries and spectators, like a man who can stand in an emergency. A sudden turn in a suit—a new point sprung upon the trial—an enemy from the flank—should draw out the resources of an advocate; and happy the man who is equal to such occasions. If equal, he is marked and remembered long afterwards; but to secure this victory, one should be very guarded not to begin the assault, for the vanquished assaulter is always doubly defeated and humiliated. Great lawyers seldom stoop to petty advantages.

Rule VI.

Brevity of facts, terseness of statements, tell best.

Only one lawyer, since Rufus Choate, has succeeded by lengthy sentences, as an advocate before juries—Mr. Evarts—and his happiest efforts are given in less elaborate style than is his usual custom. Men like Col. Ingersoll, who cut up their statements *in little stars*, are followed with greater interest.

In the jury-room, after the Court's charge, when twelve men contend for a verdict, will be often heard such little old sayings as, "The laborer is worthy of his hire"—"They don't make thieves out of that kind of men"—"It takes two to make a bargain"—"Who began it?"—"It served him right"—"Put yourself in his place"—"Give him another chance"—"How many men would do differently?"—"No man becomes suddenly vile." These are not forgotten.

Rule VII.

Never allow yourself to switch off—"Kill the squirrel!"

A trite old saying is, "Stick to your text." In a lawsuit many things happen to try one's patience; witty retorts, stinging replies, low personalities, may so engage counsel and jury as to smother and obscure the case. Jurors take sides, and lawyers that grow personal, and enter into outside discussions, will lead a jury in the same direction. The real winner, after all, is one that, with singleness of purpose, holds to his point, and hugs the issue to the end. *Harper's Weekly* gave an excellent story of a lawyer selecting a clerk, that applies to this point admirably. The lawyer put a notice in an evening paper, saying he would pay a small stipend to an active office clerk; next morning his office was crowded with applicants—all bright, and many suitable. He bade them wait in a room till all should arrive, and then ranged them in a row and said he would tell a story, and note the comments of the boys, and judge from that whom he would engage.

"A certain farmer," began the lawyer, "was troubled with a red squirrel, that got in through a hole in his barn, and stole his seed corn; he resolved to kill that squirrel at the first opportunity. Seeing him go in at the hole one noon, he took his shotgun and fired away; the first shot set the barn on fire."

"Did the barn burn?" said one of the boys.

The lawyer, without answer, continued: "And seeing the barn

on fire, the farmer seized a pail of water, and ran in to put it out."

"Did he put it out?" said another.

"As he passed inside, the door shut to, and the barn was soon in full flames. When the hired girl rushed out with more water—"

"Did the hired girl burn up?" said another boy.

The lawyer went on, without answer—"Then the old lady came out, and all was noise and confusion, and everybody was trying to put out the fire."

"Did they all burn up?" said another.

The lawyer, hardly able to restrain his laughter, said: "There, there, that will do; you have all shown great interest in the story;" but, observing one little bright-eyed fellow in deep silence, he said, "Now, my little man, what have you to say?"

The little fellow blushed, grew uneasy, and stammered out, "*I want to know what became of that squirrel, that's what I want to know.*"

"You will do," said the lawyer; "you are my man; you have not been switched off by a confusion and a barn's burning, and hired girls and water pails; you have kept your eye on the squirrel."

A whole chapter is given in this story. It is packed full of excellent advice to beginners, with a few good hints to older counsel. In every suit there is, or should be, one squirrel to kill, and no more.

Rule VIII.

Remember, juries do not know all of the facts.

Lawyers appreciate the fact that cases come to the office in a vague, uncertain way. The half is not always told; that, even with several calls and explanations, it is difficult for a counsel to understand the facts of a law suit. Think, then, how much more it is to show these facts to the twelve new listeners, under the narrow rules of evidence, and to enable men unlearned in the law to reach a correct decision. Is it a wonder that juries blunder? Is it not a wonder that they do so well?

An old lawyer once said, after every defeat in court, "If you could ask the cause, the answer would be, 'Your men had the wrong side, or they didn't understand it.'"

It may be the witnesses are confused, that they do not talk well in their statements. It is better always to win a suit first in the office. Let each witness be carefully examined, and cross-examined, and re-examined, until they know the effect of a halting, unreasonable, untruthful story, and know how much stronger a *fact* is accompanied by a *circumstance*.

Here is a suit over a broken leg in a wrestle. Six men swear it was a friendly wrestle, but the injured man says, "I'll tell you just how it happened. The most of the men were half drunk; it was late in the night; I had been sick; I didn't want to wrestle; he had tried me before; he is too strong and big for me; I shied away from him; then he came up again with his thumbs in his vest, and told me he never meant to hurt me; just then, as he got in reach, he grabbed me, so (illustrating), and jerked me, threw me against the billiard table, and broke my leg in two places; I never even clinched with him; then he bent down and said, almost crying, 'I didn't mean to hurt you, Billy; I'll make it all right—I'll pay all it costs you.'" He won, over the six witnesses; he had a fact and an incident combined. A fact is always stronger and clearer, coupled with a picture of how it happened.

Rule IX.

Show no uneasiness in temporary defeat.

Sometimes a point fails, a branch of a suit falls through. It may not be more than the regiment of an army. It is no time to flinch or show color; it is a time to bring out mettle. At such times Mr. Lincoln is said to have coolly remarked: "We will give them that point; I reckon they were right there." Proceed with as much coolness as though the value of the loss were less than a shilling. But use the other forces, and see that the whole bottom of the case never falls through a small opening. Good lawyers say that cases they were sure of winning, are often lost, and others that seemed lost in the middle of a trial, turn out splendidly in the end. It is well to have a smooth, unbroken line of evidence, but a sharp, stinging defeat, on one point, and a pithy, incisive argument on the balance of a suit, may make a lasting victory. New trials, frequent reversals and discouraging circumstances, may end in signal success.

A dry-goods runner was injured in a railroad accident, and sued the company (Grand Trunk Railway), and won a $15,000 verdict. A new trial was granted, and he gained $26,000. A change of venue and one more trial brought him $45,000 damages, which last judgment was *affirmed*. Nothing could be clearer than that impediments to a trial, or set-backs in enforcing a claim, are considered by juries in the final balance arrived at. So it is true, when one contends against odds, juries remember it, and as sure as any mean little advantage is taken in a trial, so sure the advantage

taker is the loser in the long run, for juries are human, and human nature likes fair play in litigation.

Rule X.

Drop a bad witness—Cross-examine only to gain by it.

To cross-examine a sharp witness is to strengthen his testimony. Frank Moulton, in the Beecher trial, was always ahead of his examiners. To repeat and repeat often, is to weld and rivet with the jury what has been said, as most witnesses would sooner vary the truth than own to a falsehood. It is only on cases of doubtful identity that cross-examination tells so completely, and then it is dangerous ground. To badger a bad witness, that, like a race horse, gains by every break, is no less risky than playing with hot irons where some one will be burned.

It is better to seem not to need him, and allow it to go half noticed, than intensify a weak point by repeating it on the witness stand. An exception to the rule is, where in a murder on board a steamer, a positive witness knew just how many officers were on board, who they were, and where they were; but on placing each at a certain point, he was confronted by the question, "Who was at the helm?" Which so staggered him that he broke down and admitted his blunder.

Another case of identification is where a man called with a forged bill, and took in payment a check for a large sum of money. On direct examination he was sure he knew the prisoner to be the guilty party; but being wound up gradually by the dark or light room, whether he stayed long, or was spoken to, whether he had seen the prisoner before, and finally, if he was as sure as though he *actually knew him;* witness faltered, admitted he *possibly* might be mistaken; that he had some doubt, and at last lacked fully enough of certainty to make a reasonable doubt, and release the respondent. This cross-examination should be used with caution, discretion and judgment.

Rule XI.

Make your evidence reach the real heart of the case.

Before every trial witnesses should be examined, and never sworn without cause, and held to a strict rule of evidence, until, with truth and candor, they can bring their story to the gist of the action. More witnesses swear around a point, and omit vital and essential elements, than come squarely up to the mark, and make their meaning fully known.

Sometimes a case turns on the *intent*, again on the cause, and often on who was the offender. To know what the core of the case is, and hold it in sight, by the proof is the part of a wise counselor.

Rule XII.

"The main point in law is good evidence,"

Is an old adage, and one not to be forgotten. Impress client and witnesses with the fact that a lawyer should know the *good* and *bad* side both, and be prepared to meet either; as scouts are sent out before a battle, so witnesses should be tested before trials. Show them the real issue, and hold them hard on the line of directness. For after all, "Man is a mystery that no other man can solve; we are all spirits in prison, making signals that few can understand."

Rule XIII.

Avoid frivolous objections—Save your forces for the main chance.

Many a lawyer, to be witty or show off, will talk over and work over his ground in small matters, that weary the court, and become stale when needed in the final argument.

An old lawyer (we quote him often), once said, "The worst thing that can happen to a young man is to think he is smart."

Such men grow tricky, captious, and excessively anxious to *show off* on trials. Juries are sure to count the case weak that requires such treatment. It is a mark of vanity to trifle away time on matters that reach only to the husk or chaff of a case, and obscure the kernel by such tactics.

Mr. Lincoln was noted for giving away small points. "We may be wrong on that, your honor," he would say; or "I think we were wrong there, but it is not the gist of the matter anyway." This fair play and liberality always told with a jury, and when he finally said, "Now, this much we may ask, and when I shall state it, it will be a reasonable demand." Then, with all the husk trimmed off, he would state, in a candid way, such a reasonable request that the justice of his demand stood alone and relieved of everything, but a fair, just judgment.

Rule XIV.

Speak clearly, carefully and candidly.

Judge Cochrane was one of the most patient and charitable men that ever graced a bench. He would listen a full hour to a dry,

tedious plea without turning in his chair. But he sometimes remarked aside that he knew of lawyers who could talk a full hour and not make one single point. He believed many attorneys talked their cases to death. While a careful explanation is a good argument, a long, drawn out talk, without a definite purpose, is likely to lead to the belief that the lawyer is talking to persuade men against their better judgment, and this is sure to react on the speaker.

Jurors respect and admire candor, and occasionally relish wit, as it serves to rest and relax their minds for better efforts; but levity continued at any length, is like a variety show, soon forgotten. The speeches, plays, songs and sayings that last, and ring in the ears long after they are uttered—that move the judgment and mold the actions of men, have a sacredness, often reaching to the fireside, the home and the tender relations of life. Courts and juries should be impressed with the single thought that you are not inviting them to either a quarrel or a play, but to determine some right, and redress some wrong that you failed to settle otherwise. Aaron Burr's great rule was: *Be terse.* The art of selection, he said, was the greatest human faculty. His arguments were made in half hours, never longer.

Rule XV.

Drop all examinations and arguments in the right place.

When a witness has reached a clear point and a smile follows, per force, leave the point—let it stand like a rock on the mountain side, uncovered and alone. To stop short will attract attention and rivet the mind to its importance.

All men magnify discoveries, and to leave it as though a keen sighted man would just see it, and no more, gives him credit for discernment, and relieves his mind of the burden and rubbish that he dislikes to carry.

It is only here and there, like mile-posts, that salient points are fixed in the minds of a jury, and each should stand alone in its strength and clearness.

It is the pith of a story to end well. The cream of a joke is in the little things suggested, half discovered, that lead to new-born pleasure. A surprise in evidence should end where the story ends, in a climax, that rings like a whip cracker. The same may be said of argument. There is nothing like knowing when to stop. I remember, in a trial where a son and father were parties, at the close of a pathetic paragraph, counsel said: "This should not be

Nearing, as we are, the great holidays when children gather around the fireside and tell over the stories of the past, eat and drink and be merry, in the sweet memory of the long ago; when they talk of the absent, and the loved and lost, this should not be—" And suddenly the father rose up, and with an emotion that none could mistake, he pointed to the judge and said: "Tell the jury to give him all he asks. Stop, say no more!" and counsel, though only a quarter through, was shrewd enough to stop at a winning point.

Rule XVI.

Let judge and jury know you mean what you say.

From the date of receiving a case it should grow on the mind continually. By frequent reviews before the trial, by making additions to briefs, and by earnest study, it should be a case for a near friend, which to lose will cause you pain. Let it be as though you might never have another case, and on this one hung all your reputation as an attorney for life. So charge yourself with it that it will come from every muscle, every gesture, every word, as deeply in earnest. There is no power in persuasion like where one believes what he says, where it breaks down all opposition, and cuts to the hearts of hearers like the language of a Moody or a Luther. Great men have been earnest men. Great orators have been moved by their own words and arguments, till they filled their hearers with the fire of enthusiasm. The earnest words of an old Indian chief will better express this thought. Before entering a battle he would call his braves around him, and smiting his brawny hand upon his manly breast, he would say: "I know that I shall win this battle; I feel that I shall win this battle; *It is burning in my body, that I shall win this battle!*"

Rule XVII.

Consider your adversary powerful, and be ready for him.

It was a rule of Napoleon never to underrate an enemy. In court trials the enemy is usually, and almost always, stronger than we expect. Hearing one side, and that imperfectly, and generally well colored, the attorney is often surprised to find he has much to contend with before unknown, and if he has gone to trial weak in law or evidence, he may find too late, that his enemy is all powerful and cunning, and he may fight against odds, when he looked for an easy victory. An easy victory in law is not common; usually both sides have some rights. Each party is fortified, or he would have

surrendered at discretion. It will not do to depend on a weak opponent to win a suit; he may come at the last moment, supported by able counsel; he may have practiced until, like David with his sling, he can hit his adversary in an unarmed place. There is only one way to be tolerably sure of winning, and that is to be always ready, always prepared, and always willing to provide the best weapons of warfare.

Rule XVIII.

Suits turn on evidence of facts, with the application of the law.

To make a legal defense, or a lawful demand, the evidence must be within the rules of law and the statute of limitations.

An oral agreement to sell real property or assume the debt of another is of course void, and the first consideration will be, is the demand a legal one? and second, can it be sustained by evidence? It is not only humiliating, but a source of actual loss, in business, to bring a stale suit and find it barred by the statute, or a good cause and lack evidence. So that before going to court, every case should be tried in the attorney's office; tried with the evidence and law at hand, and tried with a full knowledge of the facts, but, more than all, in starting a suit, to use the right parties, to bring the right action, is vital to the life of the litigation, and no rule of practice should be more carefully heeded than this. *Be sure you are right!* If upon the wrong road, the further you go the more time is lost, and the further you are from the object to be attained. In a certain suit, brought within a few days, of "outlawing," the plaintiff neglected an important point in joining the proper defendants, he submitted to a nonsuit. This barred the claim, as the adjourned day placed it over six years past due, while the nonsuit was as though no proceedings had been commenced. The true temper of the steel depends alike on the degree of heat and the correct time to cool the metal; the law and the facts must be well united to make a judgment possible.

Rule XIX.

Twenty questions of fact will arise to one of law, in court trials.

It is seldom that cases are lost on technicalities, more frequently on defective proof of facts. There are so many means of negligence, so many releases, or receipts and discharges, that lawyers are often defeated by some paper carelessly signed, without consulting counsel. In view of these facts suitors should be cautioned

early in the case to leave all settlements entirely with their counsel, and never settle without advice. There is nothing more annoying to an attorney than an error that takes his case out of court at the wrong time, without securing the fruits of his labor; and to prevent this he should instruct his client to keep faith with him and reveal all matters in confidence, good or bad, and conceal nothing in the case essential to be known. The more thoroughly the facts are prepared and studied, the more certain will be the result. If a case fail by a law point that no one can foresee or prevent, counsel should never be blamed for it. But a failure on a point of fact that could be foreseen is an act not often forgiven.

Rule XX.

See that you do your work well.

It brings business. To give one rule for increasing business, embodied in two words, I would say: *Be thorough.* A well made deed, abstract or paper, will bring other like work to an office. A well tried case, fully and forcibly put, will bring other suits. "That is the way," said a listener, "that I would like my suit tried if I had one." He is a worker, is a recommend for a lawyer; he makes his client's case his own, is better; *he wins his case, is still better!* But no one can win cases without work. Great efforts are made after long study. Judge Comstock worked seven weeks in the Tweed case, citing over five hundred authorities, and when he reached the end of his brief, saying, to the Court of Appeals, "And from all these cases but one conclusion can be reached, and that is, that every man charged with an offense against the law is entitled by the constitution to a fair and impartial trial by jury, for each offense, to the right of challenge, the right of counsel, and to be confronted by witnesses in every case, but in this case it was sought to annul these rules, and by conviction on one offense, multiply it by fifty-five! and imprison the respondent beyond the term of his natural life; and having suffered more than one sentence already, we conclude *he has paid the penalty, he has suffered long and patiently,* and should be released and set free!" The court sustained this view, but other suits followed.

Rule XXI.

Hold on hard to the strong points of law and fact.

It is related of Mr. Lincoln that he seemed utterly regardless of little points, holding to the core of his case, and winning by his lib-

erality and fairness. In the trial of disputed bills he would waive interest or forego trifles, from time to time, until the close, when he would bend to his work of winning the main issue with a determination seldom witnessed, and having won the jury by good humor, he would fasten their judgment on the sum he demanded. The higher one rises at the bar, the less is known of little, quibbling demands and defenses. In the "upper stories" men battle for principles and property with manly weapons, as will be seen by the efforts of Stanley Matthews, Gen. Butler, Arnold, Hendricks, Carpenter and Judge Chipman, and many others referred to throughout this volume.

If there is one maxim more to be remembered than others, in practice, it is, "BE THOROUGH." Is it a demand to collect? Get it admitted; get it secured; never higgle over trifles; watch the main chance. Is it a compromise between neighbors? reach a just settlement and insist upon it. Is it a breach of contract? make whole the injured party. Is it a family difference? end the litigation. Is it the liberty of a man in chains? show him to the jury in his noblest manhood—surround him in court by his friends and neighbors; tell what is good of him; assume not that he is wholly innocent, but that he may *not have been proven guilty.* The sacred calling of a lawyer imposes earnestness of manner, study and ingenuity, tact and energy, and a heart full of love and loyalty for right, and with them *every promise should be kept as inviolate as if made under a solemn oath.* 'Tis said, "The accusing spirit that flew up to Heaven's chancery with the *first oath*, blushed as he gave it in, and the recording angel, as he wrote it down, dropped a tear upon the word, and blotted it out forever!"

IDEAL CASES.

The rosy life of a lawyer is all in imagination. What appears to be ease and comfort is anxiety and dread of defeat. The very uncertainty of every suit makes all good lawyers anxious. No one can predict with certainty what twelve men may decide, and when young men seek this field as an easy pursuit, they fail to comprehend its true business.

It is not a lucky profession, as some may hope or dream, while in college. The luck of law is the work and tact of the attorney; or the right side he happens to have in court. There are five hundred vexatious cases to one ideal jury trial. And yet men go on believing, year after year, that once admitted, the first client that opens the door will be the bearer of a brilliant effort that shall clear some helpless, pitiful soul, before a jury and an applauding public, who will ever after come with more and more just like it, and make their law practice a perfect paradise.

True, a man may have an extra good case, once in a half dozen years, sometimes once in a score or more of years, and some may never reach a golden opportunity—very many never do.

The romance of law is fast disappearing; juries are not very much deceived by heated arguments, except in rare instances. The public press, and public opinion, have much to do with jury verdicts. Here and there may be found a peculiar fraud or murder case that awakens sympathy, but, like the Vanderpool cases in Michigan; the Beecher case and the McFarland trial in New York, and Mary Harris at Washington, their verdict is well known long before the jury retires. It is in the air; no one is surprised at disagreements when the public have already taken separate sides, and intelligent sentiment stands divided.

Luck, without work, will not be attained; honest work, well done, will in time gain place for a limited number, but the longer we live, the older the country grows, the more work is required in the legal profession Men are better educated, better skilled, and are making better time, just as trained trotting horses are improved by practice. We are learning that the *world moves* in all its varied departments—social, moral and intellectual.

The giants in the court-room to-day are not the witty jokers, the hair-splitters or the tricksters or attorney-generals of crime. The business of the law has passed all such artifices. It is serious,

solid business. It means the making of wills (and breaking them), the management of estates, the drawing of partnership and corporation contracts, the drafting of charters, the perfection of titles, the leasing and conveyance of lands, and occasionally a contested case, in all of the courts, from lowest to highest. Medium opportunities are many; ideal opportunities are rare. It is the well-made plea, the well drawn paper, the careful counselor, that keeps his client free of suits, that is marching in the front of legal business, year by year.

The widow's son is not claiming our protection. The business man is turning to the bar for safety and assistance. A change has come over the spirit and practice of the law equal to any advance in either of the sciences. Books have accumulated until to know their titles is beyond the ordinary memory of man. The time has come when the student of law is a student on business principles, when his word must be sacred, when his advice must be reliable, when his income will depend on his thoroughness in detail and a knowledge of his own times, and not on the worn-out eloquence of other ages repeated to juries. Skill, science and adaptation are the sterling qualities to be cultivated.

Ideal cases may be created from common practice with rare application, skill and acumen, so that the art of the advocate will transform a common case to an ideal trial—something nearer perfection than ordinary practice. The beauty of the work is in the construction of the building, not in the material, the location or even the plan alone, but the uniform symmetry of all its plans and proportions, skillfully executed.

WINNING CASES.

Cases are seldom won by accident—more frequently by hard work. The midnight oil, the well made brief, the candid and even tempered witnesses, the fairness of the attorney, carrying conviction to the minds of a jury, the *art of putting things in their strongest light*, all tell with a jury. A few instances may be instructive.

Walker, a builder, sued for overwork done on a dwelling. The defendant showed receipts for nearly enough to balance her bill,

and proved by strong oral evidence (by members of her family), that everything had been paid for as contracted, but not all of the work done according to the agreement. A builder was called to examine the work and make careful measurement. The result was: a house six inches too low, windows on weights instead of French windows on hinges, and many material defects of workmanship. The claim was $300. Item by item was carefully scrutinized; a chimney too short—a cornice defective—all shown by builders and experts. But the climax was reached when the defendant herself, an illiterate woman, was called to testify. She knew nothing of books or architecture or the "pictures he made on paper," but she was sure plaintiff had made the house entirely contrary to his bargain, for the windows should reach clear to the floor, for she told Mr. Walker so, and told how, if they had a death in the family and wanted to take a coffin out on the porch, the French windows would open like a door and let it out without cramping around in a narrow hall and bruising the edges of the coffin all up! This settled all with the jury, who said, "No cause of action," and the woman went away happy!

Governor Wisner was a witty man, and had a rare way of winning cases. He was retained for The People in an arson case at Pontiac, where the fire was started in a haystack. Nothing was traced of the guilty party save tracks in the snow, which fitted well to the defendant's heavy stogies. A great effort was made to show that the fire was from spontaneous combustion—the act of the Almighty—and could not defeat the insurance. Gov. Wisner said: "That all may be, gentlemen. It may be the act of the Almighty, but I never knew of His setting fire to a haystack and then walking three times around it with *a pair of stogy boots on, nailed in the heels!*" He won his case.

THE BIBLE IN COURT.

The governor was great with Bible quotations; he would use them in common *assumpsit* trials. One day, in a suit for wages, he grew very much excited, and said, "*That's the doctrine;* that's the pure, biblical doctrine, gentlemen! *If a man will dance, he must pay the fiddler!*" "Where will I find that?" said the opposite counsel. "What chapter in the Bible," added the judge, "do you refer to, Mr. Wisner?" The governor drew himself up with great dignity, and said: "*Is it possible, your honor; is it possible!* that you have been a judge for twenty years, and my brother a lawyer thirty years, and both in such *utter ignorance of an old, familiar scripture quotation like that?*" He won again.

TWO WITNESSES TO ONE.

A suit was brought to recover for a quantity of apples, shipped from Davenport to Detroit. The plaintiff alone swore to his claim, and rested. Two witnesses appeared for the defense, and claimed the condition of the goods was none the best. The case looked doubtful, when the plaintiff's attorney told the following story, which dissolved the court, jury and spectators in a hearty laugh, and the plaintiff took judgment for the full value of his apples. The story was of a Hebrew merchant in New York, who dealt in furniture. On his way home, a down-town clerk stopped in front of a store door, and looked over a bedroom set worth eighty dollars, and remarked to the dealer that he admired the patterns and the curl of the walnut very much, and asked if eighty dollars was the lowest figure, which he found was the case. The clerk went home and mentioned the fact to his wife. On his return home at night, he found the bedroom set had been put up in his house in his absence. His wife, supposing it was a surprise for her, seemed delighted.

But he denied buying it. It occurred to him, however, that he had better consult a lawyer, and learn his legal rights in the matter. He remembered a newly admitted friend in a prominent office, and stated his case to him fully. The lawyer said: "You keep the goods, and leave the rest to me."

Not long after a summons was served. This he took to his little lawyer, and asked what else was to be done, for it looked serious.

"O, nothing," said the attorney; "leave it all to me; I'll look out for him."

"But don't you want witnesses?"

"No; leave that to me."

Trial day came and passed, and the clerk grew anxious. He called to hear the result of the suit, and expecting, of course, he was beaten. "How did it come out?" he inquired of the young Blackstone.

"All right," said his counsel; "the furniture is yours."

"But what have I to pay for it?"

"Nothing!"

"How can that be?"

"O, easy enough. You see, he swore you bought the goods. I didn't say anything; that was all right enough. He had no witnesses but himself. I admitted the buying; but I put on *two wit-*

nesses who swore they saw the whole transaction, and knew *you paid for the goods!* Of course I won. How can *one man* swear against *two*, anyway?"

SELECTING A JURY.

To exclude *two* jurymen, without cause, in civil suits, and *thirty* in murder cases and high crimes, is a work of more importance than any one act of the trial—not even excepting the argument.

Men are all human. They carry their prejudices to church, to mill and to court, as much as they carry their arms and hands with them. Some are hardened by unbelief in human nature; some are crippled, disordered and impatient; some are lifeless, and with all the milk of human kindness lacking in their nature; some are noble, generous, humane and open-hearted; some with reason, others are set and determined. Lawyers should prefer reasonable, merciful, enjoyable, liberal, intelligent jurymen, absolutely free from bias or distrust. It is generally known that ex-policemen, ex-sheriffs and ex-justices, with other like ex-officials, have imbibed a deep-seated prejudice for the plaintiffs whom they have served so long; while laboring men prefer their kind, and each nationality will in some degree stand together. So in criminal defenses and civil suits, these points should be always remembered.

But, presuming the justices, policemen, sheriffs and deputies are excluded, and only the honest twelve remain, who of these are to be chosen? Why, look at them! Mark their candor, age, humor, intelligence, social standing, occupation, and let your eyes choose the most friendly, liberal and noble faces—young or old, but better young than old—better warm than cold faces; better builders than salesmen, better farmers than inventors, better good, liberal dealers than all. Avoid doctors, lawyers and pettifoggers. There is a little man, deformed, narrow, selfish, opinionated. Yonder is a captious, caustic, witty man, of stale jokes and street-corner arguments; and further on is a *hard* man, grim-faced and cold, grey look, white blood and glassy eyes. Rule them all off, if possible. The world has used them ill. They will spread their misery for company sake. If you have been wise, you have looked ahead, read your directory, and now know the occupation of each. All

this is easily done. Jurymen are usually well-known men, distinguished for wit, humor, wealth or business dealings. Chronic hangers-on, unless clear-headed, can easily be excluded.

I have known a sailor on a jury to acquit a sailor charged with crime. He was clear on the case. A wrestler once turned a suit for the plaintiff by showing a jury how it was done; he was *one of them.* In a robbery case, defendant gave evidence to show that he won the money at *draw poker.* A keen juryman, who understood the game, plied complainant with questions, and drew out that he liked poker—went to defendant's room and played, and remarked, "I am beaten at my own game," and although the amount won was over eight hundred dollars in bills, a gold watch, revolver and a twenty-dollar gold piece, the poker-playing juryman convinced the rest that the exciting game, and not the offense charged, was a clear solution of the so-called robbery.

Many a builder or expert has changed the whole twelve by knowing the case. Too much could not be said on a wise selection of jurors.

CROSS-EXAMINATION.

The object of cross-examination is three-fold. *First,* to elicit more truth; *second,* to contradict and confuse; *third,* to lay a foundation for impeachment. If a witness has concealed a part of the truth, material to your case, and looks like one who would be fair, it is better to pursue the inquiry moderately at first, and if the witness quibbles, the more rapidly, and if he angers, still more rapidly, as one in anger will speak out openly, but usually he will tell more by kindness.

To contradict a witness by his own mixed statements, a most rigid and rapid examination is required, usually asking for an answer the opposite of what you seem to desire, as the witness will invariably oppose the theory of the examiner; combativeness comes out on the witness stand. One who answers willingly, and one who answers fairly and candidly, had better both be left alone. One who higgles, gets excited and petulant has something he wants to shut out, will bear urging. "Do you swear on your oath that

this is the real language used?" will generally bring out the fact; but kindness, rather than rashness, is to be practiced.

Suppose the witness to be old—then by all means be courteous. Suppose it be a lady, observe the same rule. Suppose it to be a timid boy or girl—some juryman has such a child, and if you offend he is offended; besides "children and fools tell the truth," and you are looking for truth. Nature is the child's instructor. It is not likely that anyone will prolong an examination far beyond favorable answers, and still to leave off at the sharp point is always essential. Quit with a victory, is the best of all rules.

Juries look for sharpness, but admire fairness. They like candor, and respect shrewdness. Their sympathy is strong for children and aged witnesses. See that you do not offend good taste and a high sense of honor and fair play. To impeach a witness a good foundation must be laid in time, as "Did you not (at a time and place named) tell William Allen that you owed this claim? Did you not say to Alfred Hall, on Bond street, July 4th, 1880, that you knew the defendant was not guilty; that *he* did not, but you knew who *did* do the shooting?" "Did you tell Albert Miller, on the eighteenth day of June, in his store on Crescent street, that there was a fraud in this transaction which could all be explained?" "Have you not openly asserted yourself as an enemy to defendant during this trial, and expressed a hope that he would be defeated?" "Did you not offer to shade your testimony in this case for money?" Some strong, leading and exasperating questions may be asked of one you know can be impeached. Nothing should be handled with gloves where one is openly your enemy. Strike quick; hit hard, with weapons that sting, and juries will see that you mean what you say. But an attack on a witness without foundation is dangerous.

And finally, more cases are lost by cross-examination than gained by it; so that in general one must depend upon his own evidence, and not upon an often mistaken notion that men, having stretched the truth to gain a point, will turn and contradict it, to please a lawyer. Witnesses who will tell a story without oath will swear to it, and adhere to it, and intensify it, by repeating it through a long cross-examination. This was never more clearly shown than in the exhaustive examination of Frank Moulton and Mr. Beecher, in the tedious Beecher-Tilton suit, at Brooklyn, in which the ablest cross-examiners failed to impeach either witness.

THE LUCK OF LAW.

To the student at law, and to many men outside of the profession, an *ideal* lawyer is a great orator.

In the days of Webster and Choate, or the earlier ages of history, such a character was worshiped almost as a hero. But learning and the press, the power of print and the greater development of mankind, as a mass, have very much weakened the influence of eloquence.

Within the last dozen years it has become more clearly apparent that evidence, and not eloquence, prevails; and he that has weighed most carefully the history of cases, for the last half century, will bear witness, that more than one case is decided by the overpowering sentiment of communities outside of either eloquence or evidence.

To be a little more explicit, the *science of success* in the department of law is rapidly changing to business principles. An active, energetic, thorough and determined lawyer will succeed in his business, very largely in proportion to the capital he employs and the energy he expends in his calling.

The term capital, in law practice, relates as much to character and cultivated judgment of men and things as to any other degree of legal attainment. Indeed, it is the business lawyer, with a common sense view of general subjects, and not the stickler on trifles, that makes his mark in the courts and in the world. He who will trust cases to men, should study the character he confides in.

In the majority of trials, twenty times as many questions of fact as of law will arise, and he that is most thorough in fact will be most likely to win. This, then, is the secret of the whole matter. Earnest attention to details, thorough arrangement of evidence, coolness and absence of anger and excitement, brevity and clearness of argument, honesty and fairness of statement, firmness and decision of judgment, a reliance on reason, rather than the biased opinion of your over-zealous client, and a deliberate determination to do right.

Eloquence should never be forgotten; there are subjects in themselves eloquent. It is not in words, but in the man, and of the man and from the man, and in the occasion, that eloquence is born. It is never premeditated, but born of the theme and in the counsel. But oratory is studied, mastered and held in readiness for rare occasions.

As nothing should be done to discourage eloquent appeals, so nothing need be said to imbue attorneys with an over-value of, or reliance upon it to win in a lawsuit. The best advocates and orators are well stocked with apt quotations in prose and verse, and add force to their reasons by happy thoughts of other men, ingeniously interwoven in argument. On great occasions and in great cases, the subject itself may furnish all the eloquence demanded.

In a celebrated case in Indiana, a statesman was pitted against a country attorney, whom all expected to be beaten, if not annihilated. The case proceeded. The country boy was quiet, but clear and determined. He made his modest opening, and waited for the thunder of the orator; but it was like a lion tamed by kind usage; the strength of the statesman lacked a forum for display. He forced his plea upon the jury and they shed tears. He urged his client's cause in all general ways, and just enough to heat his little opponent to a speaking point. The country boy stood up, stammered (purposely, I have since thought) and stumbled a little, but clearing his boat from the shore, he launched off and out—ou' smoothly—through the long conflicting proof, picking up every point, commenting on it in the keenest, closest style, building such a fire of the little sticks and floodwood gathered by the way that by the light of a blazing sun at mid-day, none could see the murderer and his victim plainer than by the boy's description of the tragic scene. The tragedy was recast, the fire and fervor of a boy's warm heart was blazing in every character, speaking from his eyes and hands and face. The jury forgot the statesman, forgot the defense, forgot all but the ghastly deed, held up in such an artful, unerring, vivid manner, that a shudder ran round and round the court-room, by every new discovery. He sank exhausted, and conviction followed.

It was a flash of lightning from a cloudless sky—but the boy had remembered his case; had dreamed it out, thought it over, studied it, kept his proof like a polished knife, and pushed it to the hearts of the jury unawares. It was another David with his little sling and five smooth stones, striking where no armor had been made.

And this is the luck of law. The *luck is work;* the luck is tact; the luck is ingenuity; the luck is in bringing law to a court with wisdom, discretion, power and logic, tact and genius, well combined; and bringing facts to a jury in the clearest, plainest simplest possible light, to convince and decide for your client's cause. It will not do to *guess;* he must work; I repeat it, he *must work to win!*

REACHING A JURY.

The peculiar nature of many jury cases demands a diversity of talent. The words that win with one man may shoot clear over another's head, but most men relish quaint, short stories, little illustrations—things that impress the thought and rivet the attention, plow and prepare the ground, and render the mind mellow and attentive. It is not the voice of a speaker, nor his grace and manner, nor his eloquence nor greatness, but his sagacity—the things aptly put, the terse, crisp sayings, that cut in and clinch, that turn a jury. A German client once said: "I likes to hear dot man; Oh! he's such a purty talker; but I don't know what he say!" No worse censure of a speech could be mentioned. Dull ness is even better, if remembered.

An eminent advocate talks to one juror at a time, and never more than one; talks on and on, until there is a real spring of emotion or reason or humor, and he has reached it, and passing gently to one who seems to listen well, he finally, one by one, has personally addressed the whole twelve, and won the twelve.

Successful advocates seldom trifle with jurors or wrangle in their presence. They yield an unimportant point, and pass to deeper subjects, never covering the ear by too much husk. Mr. Charles O'Connor is of this class; Mr. Evarts not quite so clear; Mr. Beach, very eloquent, often grows rhetorical; Senator Voorhees always so; Col. Ingersoll is terse, pointed, apt and humorous—sometimes pathetic; Mr. Lincoln was quaint and used all the catch words, and common words of farmers and tradesmen, to whom he spoke. He constantly illustrated his thoughts by little incidents. Take out the stories, and his arguments would fail. It was the noble nature of a noble man—one they knew believed in his case; one they relied upon implicitly; one who spoke as well for a poor car-driver as a railroad king. His plan never changed. It was universal.

But PLACE, as well as method, must govern an advocate; the picture in Harper's of a New York dandy, on his first entrance to Leadville, with silk hat, kid gloves, and soft Morocco leather handcase, would be a poor picture of a frontier lawyer before a Texas or Dakota jury. Nothing could be surer of defeat than a case tried by such an advocate.

The accomplished scholar is too fond of saying, "The jury system is a farce—a humbug—a relic of the past." It is the abuse of the system, and not the law, that gives it a bad name. From careful observation in a score or more central States, jury trials are generally fair representations of public sentiment. Who can expect twelve men to agree on what the public are equally divided upon, to begin with? Shall jurors be censured for true independence? or shall they be blocks and stones, and never vary in opinions? I fear that too many adverse criticisms made by little thinkers on juries are in a narrow groove. The principle, as a principle, is right in all matters of personal liberty, or personal injury, but may be imperfect in commercial accounts. In cases of liberty, twelve men should unite or no conviction.

And even if it should be that extra talent and eloquence are demanded, these special cases will come nearer the middle, or the end, of a lawyer's life. Great cases command great men. Young lawyers can hardly hope to step to the highest round of the ladder from the lowest. Time, patience, long-continued study and practice will bring their reward, but not one lawyer in every hundred will reach the dream of greatness that his early fancy has created.

In all this there is still hope for the diligent. By accident, one may be drawn into a *legal duel* unawares. He may settle in a new State, beyond the reach of counsel, where his effort is the sole dependence of an unfortunate client; he may be called suddenly to duty. The confusion of a great event will tax him to his utmost, and for this he should always be ready. The forms of pleading, rules of practice and means of information, and even the hints and examples from great men's experiences, will be an anchor for a storm, if demanded. To make this anchor, and fix these rules and maxims, speeches and sentiments well in the mind, is the work of patient, painstaking study; but to make the study interesting some of the *ideal practice* herein described may be useful and inspiring. No one can read an eloquent argument and be unmoved by it. The mind grows by what it feeds on. The sympathies expand, the heart warms, by kindling its tenderest impulses; the judgment is stronger by feeling that another thinks as we do; the picture of a *possibility*, the straining and lofty aspirations of the mind are like a new discovery, and the world grows broader to a well-learned man.

Every new book digested is a new friend made. If the acquaintance extends to the greatest men of our times, in the greatest events of court practice, so much the better. Aiming at the highest work will raise us over the lowest. Musicians listen long, half

entranced, at the melody of sweet sounds; painters admire the shading of a landscape, and builders examine with care the models of architects. While lawyers, too often, start cases at random and rely on genius to produce what by labor and study would be rendered almost certain.

THE OTHER SIDE.

In a trial at court a great deal of the unknown is developed. Careful preparation will do much to avoid surprise. But something will always remain shaded, till the light of evidence shines in and reflects the true colors of a too often unhappy disclosure. The ingenious thing to do is to induce your witnesses to state, in candor, what they generally avoid beforehand. In criminal defenses, the worst is seldom known before trial, and hence must be met on the instant, and may be managed indifferently well. The skill of counsel is put to its severest test to meet and master reverses, surprises and new features. As the mind grows and strengthens on familiar subjects, so new and unlooked for events are like enemies in ambush—a dread to even the oldest veterans.

Too little attention is paid to the other side—the dark side. To excuse the wrong we seek to redress, the evil to be undone, we must study its magnitude and meet it with reasons. Lawyers of greatest fame are greatest in foresight. It is he who can tell us of the disease, and its remedy, that makes the good physician.

Law suits are not debates, that may be continued by consent indefinitely. They are stern contests of right, and end too often at a single hearing. Well may Cicero say, "How humiliating it must be to an attorney, in the midst of a trial, to find he knows so little of his case that his client is hindered and not helped by his services." It must be painful to meet abrupt reverses, to trust a broken reed, to attempt impeachment and fail, to attack character and lose, to sue in assault and be forced to pay expenses of a trial for lack of evidence, to study hard and long and only know half of his client's case. Men who keep back part of the truth for the sake of over-persuading their counsel that they are in the right, are justly punished if defeated.

Nothing helps so much as a glance at the ranks of the enemy's lines, a measure of his forces, a skirmish just long enough to draw his fire, and then a volley to match it. To this end, if no other, witnesses should be cautioned, entreated, urged, *forced* to tell the whole truth openly, unreservedly to their counsel, for and against their interest, that the *very worst may be known and provided for.*

Probably there never was a lawsuit lost where all of the facts were known to counsel. For with evidence and law against them, settlements could be reached, compromises arranged and costs avoided.

When counsel and clients learn to look clear through their cases—good and bad, light side and dark side, their side and the other side, then they will learn the science of success in jury trials.

The books are full of law, but where can we find the facts if stubborn witnesses or careless suitors will insist upon telling only the bright side of their story, leaving the darkness as a rifle pit for the enemy's weapons. Of the best tried cases for the past twenty years, the Michigan Central Conspiracy furnishes a lasting example of industry, tact and actual ingenuity rewarded.

METHOD.

Every man should have a method of his own, and cling to it like a trade mark. To be shifting and uncertain in purposes and plans is almost as injurious as moving. But if one has taken the wrong course, that every day carries him further from his forte, an early change is desirable. He need not choose the style or practice of a bright, shining light to begin with. It will be sure to make him dizzy and bewildered. Builders commence on small houses. Seamen and captains, conductors and generals are promoted from lower ranks for efficiency.

As a rule, we can take our lessons from established teachers; astronomy from professors, science from standard authors, finance from statesmen, anatomy from surgeons, law from court decisions, and religious teaching from the churches. But we should not rest satisfied without a careful examination to verify the correctness of our authority. To assume that all young men can start on a level with Webster, Clay, Beach or Butler, and argue from their methods

is a great expectation. Young men should not dream of it, the very thought is disheartening. The name, the theme, the character, all have a place in the life of a lawyer. The young man that masters a justice practice in one year, a circuit the next, and tries an important supreme court case in five years, or makes a mark in high criminal practice in seven years, is an apt and promising advocate.

Many a young advocate has heard a great orator in some grand and powerful effort, that seems easy to equal; but, like the student who thought the proverbs of Solomon quite simple, and was told to write a few, suddenly changed his curious opinion. This looking at law from a mountain top is pure speculation. He will find the ideal case and "the widow's son" are rarely met with in practice. It will be years of patient work and years of character building before he is trusted in matters that require a speech like Burke, in the trial of Hastings, or Butler in the Johnson impeachment. The story in the school books of the fence builder, whose boy was discouraged at the long line of wall to build, when the father staked it off into twenty parts, each part for a day—is an excellent model for a lawyer. The boy that had no hope of completing the whole in twenty days, was sure that one twentieth could be easily done in much less than one day. The work was completed and the reward obtained.

It need not follow that a brilliant forenoon will bring out a long, dull afternoon lawyer. But it often follows that a plodding student reaches the bench, while the flashy advocate is straining his lungs to convince an ignorant jury, that his client has a claim to their verdict. The fact is, men are rarely accorded a double quality. We credit a man with the wisdom of a judge, who is still and conservative in his views; who is neither deep, nor sound, but looks *wise* and thoughtful. Silence often passes for wisdom, while open expressions are looked upon as lacking in soundness. And more than this, men may require the force of expression and give themselves to deeper study, while having the beauty of language, and the gift of eloquence, they may rely on the one and spurn the other. Many great advocates have committed this error.

Few men have lived who were wholly original. Pioneers in their art, like Dante, Homer, Milton and Michael Angelo, spending years on a single poem or painting—men who lived centuries before the press, may claim such an honor. But business and professional men are willing to study the fine art of success as the best means of attaining it. In the sense of teachers, they covet instruction from style and language and manner of others. Webster's sentences

were full of sayings from Scott and Adams. Erskine's thoughts were modeled from Milton, and Bacon, and even Cicero was an ardent admirer of eloquence in others before he became a polished orator.

The same old royal road to riches is gained by the frugality of a Franklin, to knowledge by the industry of a Greeley, to character by the purity of a Washington, to originality by extended compilations like Shakespeare, to greatness by the goodness of a Lincoln, and to perseverance by the determination of a Livingstone—exploring on and on, with tired and broken limbs and bent body, to victory. All these are methods worth making into models. Others in other stations will follow, and have followed, that one may look at and admire to stimulate his courage and patience, and ripen his knowledge, and such study need never decrease his individuality.

Machinists study rival inventions, and improve them. Advocates commit thoughts and use them, and add to their argument the weight of authority that always attaches to well quoted paragraphs. In all this it may be the aim of the student to make one more man just as original, and a little improvement on the model he learns from. This is seen in the steam engines, the sewing machines, or the mighty ironclads of our navies.

It is not the object of reading to create a new character, but to round up the one we possess. To study a thousand speeches need not alter the style of counsel. But in assuming that good company and good reading will improve men, we admit that the more we fill ourselves with the wisdom of others the larger will be the fund of general information.

It is too late to assume that men are born great in our profession. The greatest lives deny it. The history of law and lawyers is dense with examples of plain, painstaking, studious advocates from Demosthenes down to our day, where men like Stephens, with just enough of earth to cover their immortality, shed a brilliancy of intellect in the halls of Congress.

If it is looking to models that improves our light, like Edison is said to have done in his experiments, the improvement is none the less commendable. The highest notch cut by the daring youth over the father of his country, so luminous in history, has never been reached in the legal profession. The time has come for change and growth and improvement; the time *will come* when other Websters, Clays and Marshalls, equipped with their wisdom, and added learning shall give us a new genius like Burr, or a sagacious reasoner like Burke; new defenses, like Seward wrought out in the Freeman case, until what seems impossible will be realized.

The art of the ages, with the improvement of science and application, with the dignity of wisdom, the grace of scholarship, and sincerity of intense application, will "win the proud trophy of deserved success."

LAW OFFICE, STUDY AND TRIAL.

From Judge C. I. Walker's Ann Arbor University Address, 1869.

Professional Suggestions.

I have already told you that I believe in the commonplace, and I shall demonstrate my faith by making some very commonplace suggestions. You will doubtless soon be admitted to the practice of the profession for which you have been preparing, and sooner or later will open an office for the transaction of business.

OFFICE.

Although not as important as some other matters, I think the manner in which you keep your office is not unimportant. The lawyer should remember that "Order is heaven's first law," and order, perfect and complete, should reign in his office. His books and papers should be arranged so that there is a place for everything, and everything is to be found in its place. The time and worry saved to a man, by habits of system and order, can hardly be exaggerated. Neatness, too, should prevail. Nothing is more disgusting than the office of a lawyer where the furniture is covered with a heavy coat of dust, the floor covered with old papers, and the spittoons filthy and disgusting with the result of the use of tobacco. If you are so unfortunate as to be slaves either to the habit of smoking or chewing, establish it as a settled rule of your life, that you will do neither in your office. If you indulge in these habits there, then every visitor will feel also at liberty to indulge in the same filthy habits, and the result will be that your office will be offensive to more senses than one. Your furniture should be neat and comfortable, and how expensive, should entirely depend upon your business. If the business authorizes it, a carpeted room, good chairs, and neatly covered tables, aid in giving character and dignity to a lawyer's office.

I earnestly warn you against a practice that more or less prevails, especially in country offices. A set of idle, clever fellows, fond of talking, smoking and chewing, frequently lounge into the office of a young lawyer, especially if he is a pleasant, agreeable companion, and take up his time with idle, and worse than idle, talk. The evil is a very great one. It leads to loose conversation, loose company, bad habits, and seriously interferes both with study and actual business. A client coming into an office to see a lawyer, and finding it occupied by idle gossips, will be very apt to turn upon his heels in utter disgust and seek professional advice from those who have no such surroundings. It is not entirely easy for a lawyer, especially if he loves approbation, to overcome this evil, great as it is, and yet it may and ought to be done. A young man, although known to have but little business, may always courteously yet decidedly excuse himself from having his time taken up with such guests. He may always say, "You must excuse me; I am occupied; I am engaged in study, or in business, and have no time to spare." In this way he will gain the respect of those whose society he thus declines, and will lose no friends worth keeping.

HABITS OF STUDY.

You will find, if you do not already realize the fact, that, with rare exceptions, the road to success in our profession is through *hard work.* An eminent English lawyer said: "If one would be a good lawyer, he must live like a hermit and work like a horse;" and there is truth in the saying. But this is not an evil, but rather a good. "Honest work, well done," is a source not only of profit and growth, but of genuine pleasure and happiness. No young man, just commencing practice, can expect to have his whole time occupied with business, and it is of vast importance that he at once adopt systematic habits of study and work, and thus prepare himself for business when it does come. To this end he should, at any cost, devote much time to a careful study of the principles of his profession. Few things are more fatal to the prospects of a young lawyer than the habit of idling away his time in his office while waiting for business, or the desertion of his office in search of pleasure or good companionship. Unless when business calls elsewhere, be at your office at all proper hours, and always at work.

I do not think that the best mode of professional study, by a practical lawyer, is that of reading text books in course. A better mode is to examine special topics and questions, and study them thoroughly. Let some one question be examined until you know

that you have completely mastered it, that you comprehend the principle that underlies it, and if there be a conflict of authorities upon the subject, until you know the origin of that conflict, and the several theories upon which it is based. It is of the utmost importance that you get clear, certain and fixed opinions upon the topics that you thus examine. Every effort at forming such an opinion is an element of intellectual growth, and the consciousness of having arrived at a correct conclusion gives a needed self-confidence, while such a definite opinion is an ever-ready weapon in your professional armory.

I would also advise you to master some particular branch of the law thoroughly. It is impossible for any one man to be a complete master of the whole law. The study of a lifetime would not enable him to accomplish this. One may have a general knowledge of the principles of the law in its different departments, and he may prepare upon any given case, in any one of these departments; but there is no lawyer, however learned, that will not frankly admit that there are men equally thorough in all branches of practice.

THE TRIAL ITSELF.

The first step in the actual trial of a case, after the empaneling of the jury, is the opening of the cause to the court and jury. This is a matter, the importance of which is very greatly overlooked. It should not be an argument, but it should be, in all important cases, a statement of the facts and points of law upon which you rely in the case. It should be simple, clear, yet full; candid, yet strong. Very few persons, whose attention has not been called to the matter, comprehend the force that there is in a clear, succinct, orderly narrative of facts. There is a logical power about such a narrative that exceeds often the mere force of ingenious reasoning. It is the natural logic of the facts. And you will do well to cultivate with care this power of clear, simple, forcible narrative.

The next step in order is the examination of witnesses. And this affords a very ample field for the exhibition of the tact, skill, shrewdness and legal ability of counsel—a field quite too little cultivated. Neither books nor general rules can aid very much in making a good examining counsel. It requires good sense, good temper, an intimate knowledge of human nature, quick discernment, wise discrimination, a familiarity with the rules of evidence, and very thorough knowledge of the case under consideration.

One can hardly adopt any general rule as to the manner of examining witnesses, arising from the different character of wit-

nesses. Some witnesses communicate readily and clearly what they know. From some you can hardly draw a fact, except by a process akin to torture. Some are garrulous to excess, others are taciturn in the extreme. The one, in answering your questions, will volunteer much that is entirely irrelevant, or what is worse, quite injurious, while the other will hardly answer at all. Some are sensitive, bashful, shamefaced; others bold to insolence. Some are positive

> "Without the means of knowing right from wrong,
> They're always decisive, clear and strong."

Some are so fearful of being wrong, that they are never right, and so qualify the truth that it loses all its power. In dealing with this variety of character, counsel must be cool, wary, judicious, adapting his manner to the necessities of his position. Above all things, let counsel avoid the manner of examination entitled *browbeating*. There are instances where counsel are fully justified in examining a witness with great sharpness and severity, but those cases are exceptional and very rare. As a rule, counsel who are courteous and bland in their manner of examination, who are gentlemen themselves and treat witnesses as gentlemen, are far more successful than those who are wanting in these qualities.

Let me specially impress upon you the importance of knowing where to stop, and of leaving off when you get done. Ask no questions without an object. One of the most common errors committed is in the extended, pointless cross-examination of witnesses. The right of a cross-examination is of inestimable importance, and in certain cases the exercise of this power requires the best skill of the ablest lawyers. But cross-examination, as often conducted, not only does not aid the cross-examiner, but injures his cause, strengthens the testimony of the witness, and wearies and annoys the court and the jury. If the witness is honest, cross-examination usually refreshes his mind, strengthens his recollection, and makes him more positive in his statement of facts than he was in his examination in chief. And if dishonest, and skillful, unless you hold the threads of detection in your own hand, cross-examination is dangerous.

In the practical suggestions that I have made, I have drawn freely from the fruits of a personal experience of more than a quarter of a century of not unsuccessful practice in the profession in which you are engaged, or to which you aspire. That profession I studied in the midst of many discouragements, arising from deficiencies in early culture, from poverty and painful embarrassment. Its practice I commenced in the midst of entire strangers,

without a library or means of support, and without any one to lend me a helping hand. A retrospect of my own life enables me, without the aid of "mystical lore," to foresee the future of many a member of this class; and as I cast that horoscope, I see no flowery paths of ease gleaming through the vista of coming years. The honors of the profession are neither easily won, nor lightly worn. Earnest struggle, and noble endeavor can alone enable one to surmount the "hills o'er hills, and alps o'er alps," that rise in the pathway of professional life. But this struggle and this endeavor brings its own reward in the conscious increase of power, and the fuller development of the faculties with which God has endowed us.

Prof. WALKER, for many years law lecturer, and eminent as an advocate in the prime of accurate practice, is safe authority on these subjects. Other reliable counsel have approved the "Twenty-one Rules," and kindred topics treated in this department.

MAY STEPHENS INSURANCE CASE.

Tried at Detroit, March, 1875.

May Stephens lived in Ypsilanti, and was insured in five companies, aggregating $20,000. The Michigan Mutual Life, of Detroit, contested their $5,000 policy on the ground of fraud. Deceased had only paid twenty-four dollars in all, was poor, and gave her notes for premiums.

She was drowned in a cistern, leaving two small children—ages under fourteen. A guardian was appointed, and suit brought in the Superior Court of Detroit, which was crowded full as the trial came on. Judge Longyear left the United States Court to listen, and was invited to sit with Judge Cochrane of the Superior Court. The bar crowded in *en masse*, and witnesses and spectators packed the court room for many days.

The eloquence of Mr. Lothrop, the caustic logic of Mr. Maynard and the keen, incisive points of Mr. Pond were never used with better force. Every one was at his best from beginning to end of the trial. But the climax came with the closing address of Mr. Anthony McReynolds, of Ann Arbor, then fully seventy years of age, a large, tall man, of the old school of lawyers, not often heard

in court rooms of late. A peculiar Scotch accent, a rugged, western style of speech, but extremely convincing and, at the close, wonderfully pathetic and eloquent.

The theory of the defense was (1), that Mrs. Stephens insured heavily, intending to commit suicide; (2) that she was too poor to pay the premiums, and must have known it; (3) she had secret diseases; (4) the company was so honorable, it would never refuse to settle an honest claim without litigation. Each theory was ably elaborated. But the purpose of this report is to give the quaint and peculiar eloquence of Mr. McReynolds and the effect of homely, rugged words on modern juries. He said:

"You would think that Mr. Lothrop's honorable directors would rather give the amount of the plaintiff's policy than suffer the disgrace of resisting a claim! As citizens we concede them all this high and exalted position, far above and beyond all cavil and quibbling over honest debts?

"But my brother forgets those great words, standing out in history ever since the days of England's brilliant jurist, Lord Coke: '*Corporations have no souls; no eyes to look on justice; no ears to hear the voice of witnesses; no hearts to feel for suffering humanity!*' An honest citizen may be a director in a bad corporation, where the majority rules, and he loses his identity and becomes a soulless citizen. He has the double character—one a man, a tender, loving man, and one a hard-hearted corporator. Let me explain: In my native land (most of you know where that is, gentlemen), one may be a duke and a bishop at the same time. It happened a friend was both, and a man that would make the earth tremble with his dreadful oaths. He was a notorious gambler, attended fights and horse races, got drunk, and did all that such men often do, but quite likely to disgrace his church. A brother took him to do about it. But the bishop replied, 'You don't understand this thing; you know I am duke of the realm and bishop of the church. Well, when I swear I swear as a duke, and when I go to fights I go as a duke, when I gamble I gamble as a duke, certainly not as a bishop! When I pray I pray as a bishop.' 'But, pardon me,' said his good brother, 'if I illustrate how in the great day of judgment, when the devil shall come to claim his own (the duke in all his deviltry!), then, pray tell, what in the devil will become of the bishop?' and the duke subsided. When the devil shall come for these soulless corporations and their honorable officers, where in the devil will be the good citizens?

"But she was poor! How could that work a fraud on the com-

pany? The policy had its own conditions, was its own receipt—was made at the urgent request of an anxious agent. On failure to meet the premium, she was deprived of its benefits. Talk about honest citizens paying honest debts! Talk about fraud committed on this poor, afflicted company, with its force of shrewd, sharp men; talk about the imposition of a loathsome disease! Why, gentlemen, what are the records on that fact? Strange her nearest neighbors never knew it. Strange the doctors never knew it. Here is their story in this application: Sound, healthy, five feet six, robust, skin clear, pulse 72, waist 36, no insanity, palpitation, erect, sound in every limb. Yet *rotten with disease*, they say!

"Oh, what a monstrous absurdity! Experts chosen for learning, skill and experience, baffled by a poor, weak widow, who is seeking to impose upon the world by a fraud. She had a little money. She was coaxed to invest it for her child—her bright-eyed boy, for her little girl, fast budding into womanhood. She did. She went too far. She was over-persuaded. These men, pleading in her ear, telling the stories of profits, singing their siren songs, that, like the mermaids in the legends of old, which lured the returning seamen from their well-filled boats to tie up the ships and follow the sweet songs until far away from home, in the mountains and forests, they were lost, to die alone in hunger and delirium. It is said that ever afterwards travelers took warning, as they passed, and put wax in their ears to shut out the music of the allurers as they passed. This may be a lesson in our day, for only wax could shut out the pleading appeals to join this coaxing company. * * * Oh, what a picture is here to behold! Two little orphans battling with a giant corporation! A money power, backed by the bondholders and directors. How it rouses our impulses to witness the contest!

"That mother, the object of this bereavement, is gone. Her lips are dumb; her voice his hushed—low in the silent grave. No whisper can come back to say: 'I slipped. I fell. I was misguided. I did all; I risked all for you! for you, my children, my own! For you, my little ones.'

"She has gone. She has whispered the last good night and gone! The secrets of her death are locked up till the judgment day. There they are sacred; there they will remain secure.

* * * * * * * *

"Oh! I can see her now; it is early twilight, it is winter, the snow is falling fast and slippery; whitening the little plank walk to the cistern. She has company, she hurries down the walk, catching up a pail, leaving the hook hanging over the curbing.

bending low she slips, falls, the water covers over her, no one hears, she is drowned! It is an accident; and I almost hear her say, as she looks down to you, to this upright judge, this honest jury: 'Gentlemen, you may cheat my children, if you will, but spare them the burden of dishonor; the money will be a poor pittance at the most to that priceless character that my innocent children should inherit.' We plead for the money that they deserve, we plead for the character that they own, we plead for the justice that their evidence demands; make their lives happy and their mother's memory sweet—sweet as the day she bade them good-night, the night before the night of death, little dreaming of the sudden end, little dreaming of the scandal they should meet, little dreaming she should be held up in horror to frighten a jury from duty; held up in shame and diseased to blot out the fair name she had earned for her children! You will not stain these little ones, gentlemen; you will not pay a claim that way; you will not cancel a just debt by a mean insinuation of wrong. Why, gentlemen, they would have you think that this woman loved her little ones so much that she dared the pains of hell, and drowned herself, that they might be made rich, though orphaned! No crown of glory she held in prospect; no garland of the blessed to be wreathed upon her brow! only a sordid fraud, a leap in the dark oblivion of the great hereafter, to get gain! * * *

"Gentlemen, my work is almost done; poorly as it is, I must trust to you to do a better work. And my little clients (here the speaker laid one hand on each of the client's shoulders and amid the hushed silence of rapt attention, said), my little clients, may God bless you! I have done my best to make your names an honor to our state. But, O! how poor and weak my words have been. And you, gentlemen, even now, by your silence and your interest in this case; methinks I hear you say, stop! delay not longer! let us begin this work of justice; stop! that we may rebuke this cruel company; stop! that we may restore these orphans to their own; to that pure character that they will love to honor, a character as pure as they knew her on that last and long good-night; stop! that you may wipe away all tears from these orphaned eyes, and plant the sweet rose of a mother's love in their bright young lives to grow, bloom and bless the world for their living in it; stop! that we may right this wrong at once. O God! put it into the hearts of this jury to see the truth; to vindicate a mother's name and a mother's love to her helpless children.

"O God! remove the mist from this case, reveal the truth to these jurors, let them see their duty and give them strength to do

right, and do it remembering that some day—yes, an early day to most of them, when they shall be called home, to leave, it may be, dependent children and a sacred memory of a good name—that of future juries theirs may expect the same just finding that they have found for us—a verdict and a vindication !

Jury found for $5,300, and the other three cases were duly paid. The case was an ideal jury trial. I have reported last part from memory. I have never witnessed more effective eloquence. J. W. D.

FOSTER-HATFIELD TRIAL.

Held at Indianapolis, January, 1872.

The convenient plea of insanity that cleared so many celebrated criminals failed to acquit in Foster-Hatfield case. The defense was unusually able and eloquent. The jury were deeply moved. The dramatic surroundings were not wanting; but wife and children, tears and appeals, were in vain. Attention is called to the skillful reply of Gen. Brown to the final appeal for sympathy—one of the best replies ever uttered:

"Take this widow and these orphaned children, and standing by the grave of Calvin Hatfield, unmarked by stone or monument, and in view of the great sorrow that this defendant has brought into the world, there write your verdict !" The speech is so brief that it is given in full, hoping it will repay a careful reading.

HON. THOMAS M. BROWN'S ADDRESS.

Gentlemen of the Jury : After the able, eloquent and convincing argument of my colleague, Mr. Guffin, I feel that there is but little left to say in presenting the case on the part of the Commonwealth. He has presented it so fully, so ably, that I feel embarrassed in reviewing the ground of discussion. He has invited your attention to every material point in this important and solemn controversy, and has completely exhausted every topic within the orbit of this discussion, and has left nothing to me but to repeat what he has already said so well. I have no hope that I shall be able to acquit myself as creditably as he has done, but with your

indulgence I will discharge this unpleasant but responsible duty as best I can.

To this indictment, charging the defendant with the willful and deliberate murder of Calvin Hatfield, his counsel set up a two-fold defense, and these defenses are inconsistent and antagonistic. It is said, first, that when this life was taken—that when the accused, on the twenty-seventh of November, shot Calvin Hatfield to death—he was insane; that the act was the result of an insane impulse; that it was the act of an irresponsible and irrational being. Again it is assumed that the act was one of self-defense; that it was done under the well-founded apprehension that it was necessary to the preservation of the defendant's life, or to save him from serious bodily harm.

These defenses do not stand well together. The presence of the one excludes the other. Either of them, if supported by the evidence, is complete in itself, and there can be no conviction if either be true. But there is no legal chemistry by which you can mix half insanity and half self-defense together and thus compound a complete answer to this charge.

If the defendant, at the time of this most horrible tragedy, was in fact of unsound mind, or if it became necessary for him to take the life of the deceased to save his own, or to protect his person from serious or grievous harm, then he is not guilty of the crime returned against him in the indictment. But if the act was one of self-defense—if it was the act of one who had reason to apprehend that his own life was in peril, and that it was necessary to slay his adversary to insure his own safety, then the transaction was a rational one, and the actor must have been sane. The act of self-defense is the result of correct thought. The defendant, it is said by this defense, saw the danger; realized that it was imminent; that unless he acted, and acted promptly, serious consequences would ensue. It is said that the means employed to save himself were suited to the great emergency. If these things be true, they are wholly and utterly repugnant to the defense of insanity. The act of self-defense supposes the presence of the reasoning powers and of their employment.

The defendant's counsel in one sentence pronounce him a maniac, and in the next they insist that in this work of death he acted the part of a reasoning and rational man; that he saw the emergency, knew its extent, and adopted the proper measures to avert the impending danger. I repeat, gentlemen, that these defenses are inconsistent and antagonistic.

First, then, to this defense of insanity. Upon this subject I shall

probably have much to say, not that it is particularly involved in this cause, not that there is any evidence supporting this theory of the defense that deserves serious consideration or protracted discussion, but for the graver reason that we have arrived at a time in the administration of justice, in the enforcement of the statutes against crime in this country, when it is the duty of every citizen who respects justice, has a regard for the safety of society and desires to see the law enforced, to carefully consider this oft-abused defense, this common highway of escape for the most vicious and abandoned criminals in the land.

If a crime is committed that shocks and startles humanity—one at the mention of which strong and brave men turn pale; one so shocking, so atrocious that it appears the work of a monster rather than a man; when the law has been outraged and set at defiance, and when public peace and security cry aloud for an example—it is in such a case—when no other defense can be devised—that insanity is made available. The bolder and bloodier the murder the better and the more easy the escape. On the slightest provocation and most flimsy pretext, a throat is deliberately cut or a head blown off, and the assassin is suddenly discovered to have acted under an "insane impulse" that overwhelmed his "will power," and a jury of intelligent but credulous gentlemen so write it in the verdict.

A quarrelsome, worthless, drunken vagabond, one who has long been a terror to his neighbors, who involves himself in bar-room broils and street fights, fills himself with whisky to fortify his courage, and then maliciously kills his man. No defense is thought possible, but "homicidal mania," or some other mental infirmity, is conjured up; a jury acquits, and public justice is outraged.

How easy it is to raise a doubt as to mental condition. Go back along the pathway of the man's life, show his every eccentricity, every foible, every impracticable twist in his conduct, the foolish things he has done when sober, the ridiculous things when drunk; give the number of convulsions he may have had when a babe, depict his extravagant expressions when in the delirium of a fever, and his hallucinations when sobering up out of a debauch—group all these together, and base an opinion upon them solely, the proof appears complete, and a murderer goes acquit.

Gentlemen, I am true to the history of the times when I say that these defenses are in a very large majority of instances manufactured to order—gotten up for the case—and that juries have made themselves ridiculous and brought the administration of the law

into contempt, and reproach upon our tribunals of justice, by allowing the bloodiest and guiltiest in the land to escape punishment.

Look, if you please, to the many extraordinary cases of murder of recent date, in which this defense has been made available, and can you name a single person in whose behalf it has been made, who has ever been confined because he was dangerous to society, or even put under treatment for the disease? No, gentlemen, these men, with crimson hands, walk abroad at noon day. Shall such things be? You must answer—courts are powerless unless juries do their duty.

I am not without authority for these statements. This outrage upon the civilization of the age is not only the topic of general conversation, but it has been mentioned by the Supreme Court of the State. In the case of *Bradley v. The State*, Mr. Justice Ray says:

"We are well aware that the doctrine of insanity has been employed by counsel to cover the most execrable crimes; that juries have disgraced themselves and degraded their office in applying it to the sanest of criminals. In special cases they will not distinguish between insanity and moral depravity. If there ever were a time when the truth might be withheld, the temptation would be strong upon us now. * * * Indeed, it must be evident that the cases where the shield of insanity protects the guilty, are those where the circumstances appeal so strongly to the sympathy of the jury that they would probably acquit without any pretext; where the feelings control the judgment and the moral obligation of their oath, and fit the triers, if not the tried, for an inquest of insanity."

With these observations, demanded as I believe by the exigencies of the times, I will proceed to discuss such portions of the evidence as may be thought to bear upon this branch of the case. Mr. Mattler calls your attention to the words of the act defining the crime of murder in the first degree. "If any person of *sound* mind," says the law, "shall purposely kill, etc." It is quite true, there can be no guilt—no accountability in the absence of understanding; and there can be no punishment unless the accused was in legal contemplation, of sound mind when the act was committed. But you must bear in mind that the law presumes sanity and legal accountability, and this presumption continues until it is attacked by evidence tending to show a contrary condition. The burden of this proof is upon the defendant.

Before proceeding further, it is proper to dispose of one branch of the defendant's case, and I shall do so in a word. Drunkenness is not insanity. One who commits a crime when voluntarily intox-

icated is not excused, but held to the fullest measure of accountability. Such is and always has been the law. To hold otherwise, in this day of bar-rooms and saloons, would be monstrous. Drunkenness in no sense mitigates crime purposely and intentionally committed. The learned gentlemen who have so ably conducted this defense assume, however, that drunkenness is only *voluntary*, in a legal sense, when the person gets into that condition for the purpose of preparing himself for the commission of an act. This position has the single merit of novelty; it is fortified by no reason, and supported by no authority. That it is not the law, I am certain, and I will not insult the intelligence of the court by giving it further attention. Gentlemen, the court will doubtless fully instruct you on this point.

What is insanity? What kind and what measure of mental incapacity—unsoundness of mind—will excuse the killing of a human being? The state is content with the law as stated by the counsel for the defense. I will read the rules laid down in the authorities cited by the gentlemen, and by these expositions of the law let this case, as to this question, be determined. All the Supreme Court has said in the case of *Stevens v. The State* and *Bradley v. The State* may be summed up in a single sentence: "Has the defendant in a criminal case the power to distinguish right from wrong and the mental power to adhere to the right and avoid the wrong?"

First, insanity may be said to directly affect the reasoning powers of the mind, and secondly, the will power. If one knows the difference between right and wrong; if he is conscious that the act was one which he ought not to have done, and at the time had control of his will and judgment, then, say the authorities cited, such a one will be accountable for the act. It is said one may reason correctly, and yet if he lacks the power to control his conduct he is of unsound mind. This is indeed a most liberal, and I believe a most dangerous rule. But, gentlemen, I am willing that you shall regard this as the law applicable to this case. We must bear in mind, as we proceed in this investigation, that insanity and moral depravity are not the same. How often men under the influence of powerful and controlling passion commit crimes of violence. It might be said in such case that there was a "want of power to control the conduct," but it would be monstrous to hold one excused under circumstances like these. Passion, however strong, terrible or emotional, is not insanity. It would destroy government almost to allow anger to excuse from criminal responsibility. Anger has more frequently dyed its hand in human gore than hatred or revenge. It has nerved the arm and direc-

ted the blow in many of the most heartless and brutal murders that have ever disgraced the world.

Again, one may be said to have lost his "power of will" when he yields to temptation. The thief who takes the property that does not belong to him yields to his baser nature—his depraved and vicious instincts get the supremacy of his moral powers. How many have struggled long and gallantly, until the great temptation that lay in their pathway overpowered them and they fell, and oh, how sadly. Such cases may excite our sympathy, but yet there is sin, and shame, and crime in the fall.

I desire to be distinctly understood that when I speak of the want or the absence of the will power as an unsoundness of mind, I refer to cases where this faculty of the human intellect is absent, as the result of disease, or to cases where it never had an existence. There may be an occasional case where one perfectly sane a moment before and in a moment after the commission of murder, but who just at the particular instant, by an uncontrollable impulse, lost the power to control his actions, but I think these cases rare—so rare that the hanging of a few of such maniacs would make such bloody impulses more rare in the future.

Regarding these impulsive cases as base and shameful frauds, I am still bound to admit that when the functions of the mind are so impaired that the power to control the act is wanting, there can be no crime. The defense put this defendant afloat on the great sea of human life without rudder or compass; at the mercy of every wave; blown out of his course by every gale; powerless to avoid the breakers, and liable at any moment to be stranded on the rocks. In the light of the evidence, I protest that such was not the case. I maintain that this murder was deliberately planned and consummated. It was cold-blooded and fiendish it is true, but it was the act of a man incited by a long-nurtured and malignant purpose. I believe his counsel do not insist that this deed was the result of a mania—an insane delusion. Such cases sometimes occur, but they are always well defined and easy of proof. Take the case of Hadfield, which Erskine, by his eloquent defense, has made immortal. In that case the accused was a loyal subject of the king, had been a gallant soldier under the proud flag of Trafalgar, and was ever ready to resent the slightest insult offered to his majesty. In all respects he appeared rational, except upon a single subject. He thought himself a Messiah—that he had a great mission to perform in the world; that to complete this work he must die; that he must be crucified. He sought death at the hands of the people or the executioner. Until this was done he thought

his divine mission not performed. Reasoning accurately, he knew that to compass the death of the king was treason; that the punishment for treason was death. To bring this death upon himself he shot at his sovereign in a public theater. This act was plainly and unmistakably the result of his insane hallucination. He had no enmity toward the king, nor did he desire his death. Hadfield was acquitted, and it was right; the intelligent and the good everywhere approved the verdict. This is not such a case. Here there was no delusion. The deceased did not kill his friend, but his enemy. He went out after one with whom he had quarreled, toward whom he bore malice, and having found him he killed him. He prepared himself for the bloody work, and did it in pursuance of a long entertained and deliberately formed purpose. Gentlemen, these are the actions of a sane man, and this homicide is a crime, and that crime is murder.

If this defendant was subject to illusions or hallucinations—and I deny that he was—still he is guilty of murder. He may have been possessed of any number of delusions, yet if the killing of Hatfield was clearly not the result of any of them, it was murder, willful, deliberate, cold-blooded murder. This was no bloody mistake.

I will now, gentlemen, proceed to the discussion of the facts in evidence upon which the defendant relies to establish insanity. Perhaps when I say that counsel rely upon insanity as a defense, I state their theory of the case too broadly; they only hope to create a reasonable doubt on this point, and thus defeat the ends of public justice.

Here Gen. Browne took each of the circumstances in the evidence, upon which the defense relied to establish unsoundness of mind. His discussion of this part of the case was elaborate and exhaustive. He concluded this branch of the discussion by the noon adjournment.

He then proceeded:

Gentlemen, the next question in this case is that of self-defense. If it had not been referred to by my brother Mattler, and discussed by him with a seeming seriousness, I would not have regarded it my duty to call your attention to it at all. This, if it exists, is a real and manly defense. I hope the time may never come when this great law shall be impaired or blotted out. I admit the law to be all the gentleman claims for it. It is said to be nature's great first law—that it is felt in the first throb of the human heart; that it is ingrained into our very being; that it is a part of the "woof and web" of our lives. I admit it all. The impress of

divinity is on this law and it rises higher, infinitely higher, than human statutes. If this is a case of self-defense on the part of the accused, let him go acquit. I admonish you that it is your duty to acquit him, if in killing Calvin Hatfield he did no more than defend his own person. Without troubling you with authorities, I say to you if the accused slew Hatfield under a reasonable apprehension that his own life was in danger, or that he was in peril and likely to suffer grave or serious bodily injury, he had the right to do so, and he is guilty of no crime. Bloody and terrible as it has been to poor Hatfield, his widowed wife and helpless children, the act is excusable, and no law has been violated. I have, however, failed to discover any such defense in the evidence. There is no place for it in this case. It is a flimsy, shadowless pretense, scarcely worthy serious consideration. Strike from the record all of this case except what occurred at the house at the time of the murder, and there is nothing upon which to hang a doubt. The only tangible fact to which the gentlemen refer in support of this hypothesis is that immediately after Hatfield was killed a knife was found on the floor near his person. It was unopened. How it came there is not entirely clear, but that it was in the hands of the deceased I challenge the defense to show by the proofs. It had not been used and was not prepared for use, for it was unopened. How it came there I believe to be explained by the fact that it was in his side coat pocket, and that it dropped out as he fell, after being shot, to the floor. Mrs. Hatfield swears that she saw it in his pocket after he came into the house, and I fully confide in her truthfulness. The only witnesses who speak of having seen the knife are Mrs. Owens and the defendant's sister Emma, and neither of them pretend that it was open. Emma saw it near his feet—and unquestionably where it fell—while Mrs. Owens first discovered it some five or six feet from the body. How come it to be removed? I can't answer the question. I only know that the knife was there, unopened and unused. In addition to this, the wife and mother-in-law—the only persons who witnessed the tragedy—both swear that the deceased at no time had this knife in his hands. About this there can be no question. How will this evidence be met? The counsel will ask you to imagine that the knife was there for use. But, gentlemen, let me admonish you that you are trying this case by the evidence. By the light of the evidence you must say whether or not this knife was in the hands of the deceased.

Mr. HANNA (interrupting)—I ask you, General, to state how this

knife fell out of his pocket, when it was found in the middle room? I ask you to state this as a matter of fairness, as I shall probably allude to this circumstance.

Gen. Browne—It is impossible for every feature in a transaction like this to be fully explained. This occurrence produced extraordinary excitement and tumult. A multitude of persons were soon attracted to the scene of this crime. There was hurrying to and fro, and that this knife should have changed positions within an hour is not strange. But how came it in the middle room? The deceased stood in the middle room when he was shot; and when he lay there dead his feet were still in the door-way of the middle room, and the knife was first seen near his feet. This explains the matter, if it needs explanation.

But, gentlemen, it is insisted that Mrs. Hatfield was not present when this murder was committed. Why not present? Because Mrs. Owens admitted to Foster that she did not notice her presence at the time the shot was fired. Mrs. Hatfield swears she was there. That Mrs. Owens did not see her is explained by the fact that she stood to the rear and right of that old lady. Under the circumstances you are not astonished that she was not observed by this brave old lady, when, with an infant on one arm, she was with the other defending, with all the vigor of her old life, her son-in-law from the fiendish attack of his murderer. After the gun had been snatched from her hands, and she dragged to the floor by the defendant, she still watches intently the result. In an instant afterward the deed is done, and Hatfield, with his head blown literally from his shoulders, falls lifeless at her feet. Are you to discredit the evidence of Mrs. Hatfield, simply because under these most trying and exciting circumstances Mrs. Owens failed to observe her? But Mrs. Owens does place Mrs. Hatfield there. On the instant the gun was fired his heart-broken wife cried out in her frenzy: "Has he killed him?" "Yes," was the terrible response, "he has shot the whole top of his head off." She was there then—at the very instant of the murder.

But it is clear that she was present from the other facts in the case. That she was there when the defendant and deceased came to the house is abundantly established. When did she leave? How did she return? Yes, gentlemen, she was there. Although her mother and herself were examined separately—thoroughly, exhaustively, their evidence is in accord to the minutest particular. Mrs. Hatfield and Mrs. Owens were both present, and both swear

clearly and positively that the deceased neither used or sought to use a knife on this occasion.

But, gentlemen, I say to you, in the presence of, and subject to the censure of this learned court, in the presence of these learned gentlemen of the profession, and in the presence of the able counsel who so zealously conduct this defense, Calvin Hatfield had the right to have his knife there; to have it open, to have it in his hand, and with it to have taken the life of James Foster. And had he done this, he would have stood in the presence of this court, and in the presence of the civilized world guiltless of any crime. It is true the law has a tender regard for human life—it is sacred in the eye of the law, and it is your duty as peaceable and law-abiding men, and it is my duty to retreat—if you or I can do so in safety—rather than take upon our hands the responsibility of the blood of a human being, the fearful responsibility of sending a human soul unprepared into the presence of Almighty God. But I insist upon it, gentlemen, that when any man, drunk or sober, enters my house with loaded gun, capped and cocked, ready to take my life, there is no rule of law or ethics that requires me to fly from the presence of such danger. To retreat in such a case but increases the danger. To such a man you should stand toe to toe and eye to eye, and take advantage of every motion. *You need not wait to be shot, but under these circumstances you may rightfully kill your assailant.* This would be self-defense. It was thus that Calvin Hatfield was situated on the twenty-seventh of November. If he was the defendant and Foster had been slain, how soon you would return a verdict of not guilty. The deceased simply stood there, in the presence of this defendant, fearing to fly and unable to defend himself. He was killed—and, my God, was not this murder—deliberate, atrocious, monstrous murder? Whether the deceased was armed with a knife or unarmed—whether the knife was open or closed—whether in his pocket, on the floor, or in his hand, the act of the defendant in slaying him was murder. If this homicide was committed, as I insist it was, and as I shall presently show, in pursuance to a deliberately formed design, the crime of which the accused is guilty, is murder in the first degree. The gentlemen have read but little law. They have, however, called your attention to a single authority. It is briefly this: If one engages in a fight, and in good faith seeks to withdraw from the struggle, and does all that is reasonably in his power to do so, but is pressed by his adversary and is put in imminent peril, he may then slay his antagonist and be guiltless. This is good law, and I am content with it. But it has no application here. Gentlemen tell us that

the struggle commenced at the door of the middle and ended at the door of the back room—that the defendant retreated across one room to the distance of sixteen feet. Retreated from whom? From an unarmed and defenseless man! What a retreat was that? Was this such a backing out as showed an honest purpose to withdraw from the fight? But there was no fight. Hatfield had not struck, nor had he attempted to strike a blow. If he was pursued by an unarmed man, why does he use the muzzle instead of the butt of the gun? But, it is asked, how do the parties cross the room, and why? The problem is easy of solution. The defendant, in jerking his gun from Mrs. Owens, makes it necessary for the deceased to close with him in order to save his life. It is his only hope. He rushes toward him with his arms open—the defendant retreats until he gets the mere length of his gun in advance and then fires. This is the evidence, and these are the facts. He puts his gun within a foot of Hatfield's face, when he is standing or coming toward him with open hands, and blows his head from his shoulders. In the presence of these uncontradicted and unmistakable facts, this defendant, by his counsel, says that he acted in self-defense. To what desperate straits the gentlemen are driven! To what flimsy pretexts and weak excuses they are put!

I hope you understand my position as to the extent the knife figures in this case. I assume, first, that it was not present, in the hands of the deceased, at this murder; but, if you doubt this, I confidently assert that he had the right to have it there, and that it was his duty to have used it. Why parley over this question? Who sought the quarrel? Who provoked the difficulty? Who made threats? Who had murder in his heart, and went out in search of a victim? Was it poor dead Hatfield? From his grave he sends out his protest and puts in his denial. Do you believe that Hatfield intended to injure the defendant? Do you even think that the defendant thought that he would? No. The defense would have you believe that Hatfield intended to murder, and that he went into the presence of his Maker with the deep damnation upon his soul. You do not, you dare not believe it, gentlemen. I will now dismiss this branch of the discussion with this single observation. The court has permitted the defendant to put in evidence his own statements as to what occurred at the time of the homicide. To his mother and sister he said he had committed the act in defense of his own person, that the deceased had pursued him three squares with the knife before reaching the house, and that after arriving there he was still pressed by the deceased, until he was literally driven to the wall, and that, when

he could fly no farther, he turned and shot his assailant. Are you to believe what he said when under such strong inducements to speak falsely? Under ordinary circumstances this evidence would have been excluded. These statements were only admitted, gentlemen, to show his mental condition at the time. You can not consider them as true, nor can you apply them to any other branch of this case than that to explain which they were admitted. The court will so instruct you.

Gentlemen, these statements of the defendant are glaringly false and absurd. They are contradicted by all the evidence, as I shall conclusively demonstrate as I proceed with this argument. These statements disappear like mist before the morning sun in the presence of the truth. John Young, the little boy introduced by the defense, told you that he saw the parties together on West street, two squares from the house; that when the defendant was attempting to use his gun, Hatfield took out his knife; that the defendant, before he had opened it, knocked it from his hands; that Hatfield picked up the knife and returned it to his pocket unopened, and that they then passed on together toward the house. The boy followed close behind them and saw no knife and no pursuit. Mr. Ramsey, who witnessed the same transaction, corroborates the boy. He saw the defendant attempting to shoot the deceased; heard him swearing most profanely that he would do so, but saw no knife. He says that the deceased, after attempting to wrest the gun from the defendant's hands, stooped down and gathered up a handful of sand, but immediately threw it down. The parties then started toward the house. They walked side by side—there was no flying—no pursuit. Mr. Ramsey is the older and more intelligent witness, and you can safely rely upon what he says. The boy Young was mistaken about the knife.

The defendant's statements as to what occurred at the house are also lies. Mrs. Owens and Mrs. Hatfield flatly contradict him on every point. Would you expect a murderer to tell the truth? Will you confide in the statements of a man whose hands are yet wet in human gore—statements made, too, to save his life?

The gentlemen who conduct this defense would have you believe that the defendant, under all the circumstances detailed by the witnesses, having provoked the quarrel, having brought on the rencontre, if any there was, stands guiltless in the sight of God and man.

Gentlemen, I have now done with this question of self-defense. I come now by your permission to present the case, in chief, as it is understood by the state. So far, I have been discussing the

defendant's case. In the further pursuit of truth, I may have occasion, now and then, to refer again to these questions of self-defense and insanity. I hope I shall not tire your patience. I know it is not as laborious to hear as it is to talk in this crowded court-room and this heated and unhealthy atmosphere. Your responsibilities are much greater than my own. You feel this, I know. You hold in your hands the balances in which the peace and security of human society are placed upon one side, and a human life on the other. You have a just appreciation of your solemn obligations, I know, and I feel assured that you will hear me patiently to the end. I will trouble you with no further apology, but proceed as rapidly and briefly as I can to a conclusion.

Gentlemen, I maintain that the defendant is guilty, if guilty at all, of murder in the first degree. I shall so discuss the case. It is that or nothing.

I will discuss it because I believe it is that or nothing. I will discuss it because I am asking no compromise in this case. I discuss it because I want a conviction in the case, if the defendant ought to be convicted. On the other hand, I want you to acquit him, if there ought to be an acquittal. There is no compromise in this case. It is your duty to hew to the line, let the chips fall where they may. It is your duty to find the truth under the law and the evidence, and when you find it to put that truth into your verdict.

Gentlemen, it is murder in the first degree. I will not tediously elaborate upon this subject. I will read to you the statute, the law of the State, that rests upon us all. You accepted it when you took upon yourselves the rights and obligations of citizenship. And you have added to that obligation the oath you have taken as jurors in this case to enforce it. The law says that "if any person of sound mind shall purposely, and with premeditated malice, kill any human being, he shall be guilty of murder in the first degree." That is the statutory definition of the crime. It is easily understood. I call your attention to it now. When I pass from it I shall not recur to it again. I have heretofore discussed soundness of mind. What does "purposely" mean? It means intentionally, designedly. This is its meaning in the ordinary acceptation, and it means no more in the statute. What does "maliciously" mean? To constitute the crime, the killing must not only be done purposely, but also maliciously. It is a word frequently used by us all. It means simply, in this connection, intense hatred in the heart of the murderer towards his victim. It is evidenced, says a law writer, by a depraved or malignant spirit. It is exhib-

ited, when a wrong doer acts wholly regardless of social duty. It is evidenced by a rooted design to do mischief. It means, in common parlance—revenge. In legal contemplation its presence is always presumed in the perpetration of an unlawful act. If you should step upon the street and wantonly take the life of a passer-by, the presumption would be that it was done maliciously. My brother Guffin says malice is of two kinds. I would prefer saying that the evidence by which it is established is two-fold. When the proof shows that the defendant has made threats which have been executed in the commission of the crime with which he is charged—when he has made preparation for its commission—as by lying in wait, or procuring a gun and seeking his foe, then the law says the malice is express, because the threats and the preparation are the expression of it. Where the same crime is committed, but the proof does not show this antecedent expression of malice, malice is implied. If I should go into your stable and cut the throat of your horse, even without motive, it would be a malicious act. If malice is implied in my so taking the life of a dumb brute, how much more reasonably and strongly is malice presumed when the life of a human being is taken. I shall not take up your time in explanation of the word. You know what malice means. It presumedly exists when the act is intentionally done, and is serious and dangerous in its character. Where there is no known cause, you are to presume malice in the killing of a human being. Threats are not necessary to make it murder in the first degree. It is needless to refine upon this subject. Where there has been time for thought, deliberate thought, and that time has been employed in deliberation of the purpose to do the unlawful act, and the act is by the mind resolved upon and then committed, the act is done with premeditation, purposely, and maliciously. And this is so whether the intention to do the act was formed a minute, or a year, before the commission of it. There is no restriction, or fixed limitation as to time in this regard. It is as much murder if, in meeting you in the street, I then determine to kill you and do there kill you, as if I had nursed that purpose in my heart for years. Just as much murder in the first degree as if I had theretofore resolved upon your death, and with "patient search and vigil long" had hunted and followed you through the land and at last killed you. It is not necessary that I should intend especially to kill *you* to make it deliberate murder. The highwayman who stands by the roadside awaiting the coming of the first traveler, to demand his money, be he whom he may, if, on his coming, in an attempt to rob him he kill him, he is guilty of deliberate, premedi-

tated murder. Let us look at the facts in this case to see whether it is a case of murder, of murder in the first degree, murder purposely and maliciously committed—committed with deliberation and premeditation. The proof is clear and unmistakable. There can be no escape from it. It is nothing less. To write anything else in your verdict in the light of the evidence would be at the expense of truth—it would be a legal lie. What is the uncontroverted evidence in this case? There were frequent quarrels between the defendant and the deceased. The motive springs here. I am indifferent whether or not you consider the utterances of the accused eighteen months before the homicide. The evidence is overwhelming, even if the State were confined to the fatal 27th day of November. I care not to go beyond that. I care not to go into the petty quarrels and threats indulged in prior thereto by and between Foster and Hatfield. If, under the same circumstances, Foster had been killed by Hatfield, the crime of Hatfield would have been the same as that for which James Foster stands on trial to-day—murder in the first degree.

These threats of Hatfield stand in no legal relation to the case. If there is any evidence looking toward self-defense, you may use these threats, in that connection. That defense, however, being wholly unsupported, the evidence of Hatfield's threats should be withdrawn from your consideration.

Tom Reeves has been attacked—impeached. We don't rely upon his testimony. So far as I am concerned, it will not be alluded to in this argument. I do not ask you to lay the weight of a feather on this defendant because of what Reeves has sworn to during the progress of this trial. He has neither weakened or strengthened this prosecution. So far as I have the power to do so, I withdraw him from this case.

Gentlemen, we now come to the morning of the twenty-seventh of November, 1871. Calvin Hatfield was on that morning alive, and his hopes and aspirations were probably as bright as yours or mine. He was yet a young man—his life mission scarce half performed. He was a husband and a father, and had five helpless children committed to his keeping. This was his status at nine o'clock on that morning. A few hours afterwards he lay bleeding and lifeless—his wife a widow, his children orphans, and they, poor and friendless, left to meet the trying realities of life without a father's or a husband's care or counsel.

You are now to consider

"The deep damnation of his taking off."

The intention of the defendant on that morning was probably to commit a double murder. The first we hear of him on that morning he is threatening both Reeves and the deceased. It is certain that when he flourished his knife in the presence of Mrs. Owens, and before he procured and loaded his gun, his threats were more particularly directed toward Tom Reeves, but it was otherwise when he returned with his gun. Then Hatfield, and he only, was the subject of conversation. Mr. Mattler falls into an error when he tells you that the defendant, on that morning before coming up into the city, made no threats of violence toward the person of the deceased. He is mistaken, as you will observe when I call your attention to the evidence of Mrs. Hatfield.

Gen. Brown here read from the phonographer's notes of the evidence: "When he came back with the gun," says Mrs. Hatfield, "he said he had loaded it with slugs of iron. He then asked me" —Oh, the heartless depravity of the man—how it chills me to repeat it—"he asked me, 'Sally, can you *raise five little children alone;*' I said 'No, Jim, I can't.'" Think of his unfeeling, heartless reply: "Yes, by G—d, you can, Sally; it will be hard for you, but you can do it." I ask you to let these words sink deep into your very souls. I would put them there with emphasis, because they show the spirit that animated the subsequent conduct of this defendant. "Can you take care of five children, Sally?" "No, Jim," responded that agonized mother, and wife. "No, Jim, I can't." "Yes, you could, but it would go G—d d—m hard." What did he mean? Toward whom this malice? In what direction went out this spirit of revenge, and who was to be the victim of this depraved and malignant man? Mrs. Owens relates the same facts, and puts in the mouth of the accused the same language. Were these threats directed at Reeves? What did he mean in putting this cold-blooded question to Mrs. Hatfield? Was it not murder, and the murder, too, that he committed in three hours afterward? In the further conversation at this time he tells this woman that he had killed her husband, and would bury him like a gentleman. Does not this explain the true intent and meaning of what he said before? But as we pass forward in the evidence all doubts clear away. The defendant and Mrs. Hatfield start up to the city in search of deceased, and after going some half mile they meet Mrs. Foster. Here these women try to prevail on the accused to return. Failing in this, they use argument and entreaty to induce him to give up the gun. He obstinately refuses, saying, "I am going to kill myself a man with it." Kill who? For whom was he searching, and whom did he subsequently mur-

der? We next find him in Schwigo's saloon, engaged in putting a stranger through the infantry drill, according to Hardee. The man who stood behind the bar tells you he did it correctly. The gentlemen on the other side put it in proof that at this time he removed the cap from the gun, and threw it on the floor. This was done at the saloon-keeper's request, as he had discovered the gun to be loaded. This cap has been preserved with great care, and is brought here by the witness. I confess myself at a loss to divine what the defense expect to make out of this fact. I thank them for having put this circumstance in evidence, for it supports our theory of premeditation, as I hope to show you, and is consistent with all the other facts in evidence. Was there a cap on the gun at the time of the homicide? That the gun was discharged is overwhelming evidence that there was. Mrs. Hatfield swears that she saw one on the tube a moment before the shooting. This being so, I ask the learned gentlemen, and I put the question to the jury, why was another cap put on the gun after leaving the saloon? Was the defendant intending to leave the city? Certainly not. Was it necessary to have a gun charged and capped at nood-day in the heart almost of a populous city like this? Was anybody to be killed? Yes, gentlemen, he "was going to kill himself a man," and that man was Calvin Hatfield. This little circumstance of the substitution of that cap is an important one, and tends most strongly to show the presence of the premeditation and purpose to kill. It also shows thought, purpose and preparation. This destroys the theory that the defendant was a "mere machine"—an irresponsible being, for here was the act of a sane planning mind—one adapting measures to the end sought to be attained. I repeat the question, gentlemen, why did the defendant renew the cap on the gun? His subsequent conversation and conduct unmistakably answer the question. He leaves the saloon in company with the deceased and Mr. Owens. The deceased was before—Owens in the middle, and the defendant in the rear, when they started homeward. The defendant soon passed to the front, the gun on his arm, saying to Owens as he passed, "I have the dead wood on him." No name was mentioned in connection with this threat, but who, gentlemen, was referred to? You know the name too well to make it necessary that I should repeat it. Next in the order of events are the occurrences on West street. Here the deceased is threatened—here the defendant makes an attempt on his life, and here is his first effort, on that day, "to kill himself a man." It is at this point that the boy Young says that he said, "Hatfield, I will let you live until you get to the house, and then

I'll kill you." Strange coincidence! Hatfield was killed at the house, and immediately after his arrival there.

Gentlemen, I have already discussed somewhat in detail the transaction at the house. You can not doubt that Mrs. Owens states what occurred there truthfully. Never was a witness more worthy of credit. She may be old, and poor, and ignorant, but she is honest and appreciates the obligations of an oath. She feels the awful responsibilities of this occasion. And seldom has a witness stood in relation to a case as she does to this. I will not say that she has no feeling in the case, but I can say that she has no feeling that could move her from the line of truth. Her sympathies must go out toward the accused as well as his victim; she testifies in the presence of the grave of one murdered son-in-law, and in the presence of another who stands under the shadow of prison walls or the gallows.

Then, gentlemen, so far this case is briefly this: On the morning of the twenty-seventh of November, the defendant procures and loads a gun—loads it "with slugs of iron." He avows his determination to kill the deceased, goes in search of him, finds him, and after several unsuccessful attempts, kills him. He kills him without cause—without excuse, and in cold blood. This is the State's case. Will you say, gentlemen, with these facts before you, that the homicide was not committed with purpose, malice and deliber ation? It is your duty, gentlemen, to look this case squarely and sternly in the face. Look at it as men who feel the necessity for the administration of simple justice. Look at it as men desiring to see the law enforced, that there may be peace, order and security in the land. Look at it with the view of administering the law in its spirit, and so write your condemnation of this monstrous crime in your verdict, that in the future our wives and little ones may lie down at night and sleep peacefully and quietly, without apprehension or alarm. Gentlemen, the time has come when the law must be more inflexibly administered, or the bludgeon and bowie knife will usurp the place of the law. The time was, and I confess that I have lately feared its return, when he was most secure who possessed the strongest muscle and the most malignant spirit.

Another step in the history of that fatal day, and we are done. Immediately upon killing Hatfield, the defendant attempted to escape. Only the guilty "fly when none pursue." But it is insisted by the defense that it was a most bungling and unskillful attempt at flight. You would not expect one having the conscious-

ness of such deep sin upon his soul to be otherwise than cowardly and confused.

He not only attempted to escape from the scene of his crime, but another strong and incontrovertible evidence of his guilt grows out of the fact that he deliberately frames a lie for the purpose of his defense. He tells a broad, palpable falsehood that he might allay the fears of his mother, and make it avail him if he should be captured and brought to trial. To his mother and sister he set up a most excellent defense, and a most rational one, but it was utterly false. He varies the story a little, however, upon leaving his mother, for he exhibits a knife to Miss Chesney, and says, "I've just killed a man, and ought to have done it long ago." To Mrs. Hasselberry he said, "I expect I've killed a man; if I haven't, I'll go back and finish the job." He makes similar remarks to Clay Rice. These several conversations all occur within a few moments after the tragedy. I need notice these statements no further.

The defendant is next found in a saloon on the Bluff Road, in the southern part of the city. It was here, you remember, that he was found by the men in whose wagon he was subsequently captured. When Myers came into the saloon, he remarks "that he had just heard that a man by the name of Foster has killed his brother-in-law." The defendant at once answers, "My name is Foster, and I have just heard of the circumstance; but the man that killed his brother-in-law is of the name of *Roster*, not Foster." If this defendant was an irrational man, this, at least, was a most rational attempt to escape detection.

But something has been said about his conduct when brought into the presence of the deceased at the undertaker's. It is assumed that his stoical indifference there, under such solemn circumstances, is proof of some sort of mental derangement.

Gentlemen, are you to say that one who could deliberately murder a friend, a relative, one at whose board he had sat—under whose roof he had found shelter—one who had stood by him in health and who administered to him when sick, could not also look complacently and coolly on his bloody work after it was accomplished? Is it to be said that the defendant is not accountable because his crime is more revolting and atrocious than those usually committed? Will you set a premium on butchery by acquitting because the work is most wicked in its conception and cruel and fiendish in its execution? Would the gentleman have you so write it in your verdict?

The whole conduct of the accused after the commission of this great crime, has been that of a sane man. His attempt to escape,

his ringing the change on the name at the saloon, his exhibition of his cut hand, and his attempt to get the driver to remember it so he could swear to it, his denial of his name to the police at the time of his arrest, and his conversations with the jailor, are all the clearest possible proofs of his entire sanity.

He may have been, to some extent, under the influence of liquor, but it won't do to acquit him simply because he was drunk. This would be indeed a dangerous precedent in this country of saloons. I say it would be most dangerous, for most of the crimes of the day—the murders, arsons, and robberies all over the land, are committed by persons more or less in a state of intoxication.

The solemn question is upon you—was this homicide the act of a responsible being, was it done without legal excuse, and was it done with purpose, malice and deliberation? If you are able to answer this question in the affirmative, your duty is clear—the crime is murder in the first degree, and no other crime whatever. You have so written it in your statutes, and these statutes you have solemnly sworn to observe.

Your duty is a clear one, and I feel confident that you have the courage to perform it. Unless you do so, gentlemen, honestly and faithfully—unless you fully perform the solemn obligation you took upon yourselves at the beginning of this trial, you are not worthy the respect and confidence of honest men. Courts, and indeed governments, are powerless in the punishment of the guilty unless juries fearlessly do their duty. A faithless and imperfect administration saps the foundations of society, and excites the people to anarchy and misrule. We need not go far to find the illustration. In our own proud Indiana, with its schools, bibles and churches, within the last year or two a number of victims have been immolated by the demon mob. Administer the law, purify the fountains of justice, protect society from the vicious, and society will feel safe and good order will reign within our borders. Let me appeal to you to do your whole duty in this case, even though your verdict "may touch the heart of a mother or a sister." Punishment must be certain, that society may be safe. It is sometimes necessary to make an example, and if there ever was such a time it is upon us now.

The learned counsel attempt to excite your sympathy for this unfortunate man. I do not complain of this. Think as kindly as you may of the erring—it is natural, it is right. But, gentlemen, even in the matter of sympathy, there is another side to this case. *Take this widow and these orphaned children, and go to that lonely kirkyard, and standing by the grave of Calvin Hatfield, unmarked*

by stone or monument, and in view of the great sorrow that this defendant has brought into the world, write your verdict. When you have done this, the demands of public justice will be satisfied and a broken law fully vindicated.

Found guilty and hung.

THE TRIAL OF UNDERWOOD.

Before JUDGE SWIFT, *at Detroit, May, 1874.*

The salient points of this romantic trial will appear in every paragraph, and need no introduction. It developed the peculiar fact that jealousy is insanity, only in a lesser degree. The argument of counsel is a graphic and highly interesting manner of comparing a modern, commonplace character to the melancholy Dane of Shakespeare's masterpiece. Underwood and Hamlet were very unlike, but the love mania of one may have equaled the clouded reason of the other. Underwood was plain, of weak mental developments, not of sufficient interest personally to adorn a chapter, but his remarkable career, his singular tragedy, and the ingenious defense, make a novel and entertaining history of something original on emotional insanity.

It will be read with a relish by those who would know "the hidden mystery of a mind diseased." The popular plea of emotional insanity, in its rapid development from the trials of Cole, Sickles, Harris, McFarland, received additional force by a supplemental cause, of *jealousy*, as developed in this peculiar case. A more concisely framed defense, and plausible showing of cause and effect, has seldom been recorded. The line of argument shows not only jealousy as a frequent cause, but that it leads a disordered mind to attack its objects most admired, and not in anger or revenge, but like the ancient Roman fathers, to protect the loved object from an imagined harm.

The development is unique; the reasons cogent and convincing. Science and Shakespeare are aptly cited. The climax of the orator's effort is in the meeting and embrace of the treasured letter and the murderous knife, where they slip into the pocket side by side, and "embrace in blood." And again, where "the struggling

spirit beats against the walls of clay," saying, "Someone has stabbed me! Who can it be?" Many scenes are tragic, but the case is so brief that all of it should be read to be appreciated.

A single incident in this trial will be of value to students seeking skill in the management of a prisoner. Whether *acting* or not, his statement was in a key too low to be understood by the jury, who called for louder tones, until, finally, the prisoner was allowed to stand before them, more in the attitude of counsel, while, in trembling tones, charged with emotion, in his ignorant, awkward style, in striking contrast with the vigorous manner of Mr. Chipman, who stood near him. Underwood's appearance was that of a poor, broken, demented simpleton, with low forehead, poorly developed mind, in tears, forgetful, bewildered, scarcely knowing how one word would match another, he presented a real picture of imbecility, and long before he closed his rambling story, in an English brogue, broken by sobs, the jury believed the quaint words of an old lady witness, who said of him: "Tommy was always *queer* like." Judge Chipman's skill was used in *intensifying* this homely expression and the prisoner's statement with a masterly appeal for his client. But he, even, admitted that the prisoner's statement was the most eloquent of all defenses that could be made in his behalf.

William T. Underwood was indicted at the April term, 1874, in the Recorder's Court of Detroit, for the murder of Charlotte Pridgeon on the sixth of the preceding month. The circumstances of the case were peculiarly revolting, viewed in the light of the prisoner's sanity. The murdered woman was his mistress, of whom he was passionately fond, and he killed her in broad daylight, in a public street, with a sailor's knife which he always wore about his person. He immediately delivered himself up, avowed the act, bitterly bemoaned it, and attempted his own life during his imprisonment prior to his trial.

Public indignation was intense, the press was filled with denunciations of the murderer, demanded a speedy trial and conviction, and crowds thronged around the prisoner when passing from the jail to the place of trial, and were with difficulty prevented from using personal violence.

It was expected the prisoner would plead guilty, as nothing was known of his previous history, and when it was announced that he had employed counsel to defend, it was regarded as useless, and when arraigned in court, so strongly was the judge impressed with this prevailing public sentiment, although one of the oldest and best of the criminal judges upon the bench, he asked of the

prisoner's counsel, when a delay of trial was requested, what possible defense there could be to the accusation. Indeed, the defense was expected to be more in the nature of the guarding of the right of the accused than an attempt to defend against the crime.

The trial was postponed, that the prisoner might take, by deposition, testimony in England, where he had formerly lived and his family then lived. A plea of "insane impulse," or "temporary insanity," was interposed.

The first trial came on before the recorder at the May term, 1874.

The defense which had been pledged was ridiculed by the press, and public sentiment was overwhelmingly against the prisoner, so that it was with great difficulty a jury was obtained. The prosecuting attorney, Fitzwilliam H. Chambers (now circuit judge of the county), conducted the prosecution, and Henry M. Cheever the defense.

The testimony for The People was short, direct, and uncontradicted. The knife was found in the prisoner's hand after the killing, covered with blood, and he confessed the act immediately to the officers and to others. The girl, upon her death-bed (she lived but a few moments), said simply this as to the manner of her death: "I am dying; some man has struck me."

It appeared that Charlotte Pridgeon had been the mistress of the prisoner for some months; that he had nearly supported her from his hard earnings, and that they were at one time engaged to be married. The testimony for the defense was to the effect that during her life of criminal intimacy with Underwood she had constantly given him occasion for jealousy by her intimacy with other men; that they had frequently quarreled, and as frequently been reconciled; that just before she met her death he had met her by special appointment; that she taunted him with his impoverished appearance and ragged clothing; that he replied that he had no better, that he had given to her his money; that she drew from her pocket a picture of another man, taunted him with the fact that she was going to live with this man in another city, and concluded by a positive command that he should never seek her presence again. At his earnest solicitation, she consented to walk with him for a few minutes in the street.

This interview, up to the time of their going into the street for a walk, was overheard by witnesses and detailed in court. They left the house before dark, and from that moment no person could be found who saw them together. Half an hour after leaving, Charlotte Pridgeon staggered into the house alone, mortally

wounded, stabbed in her left breast, exclaiming, "I am dying, a man has struck me!" and shortly expired.

This closed the testimony of The People, so far as the facts of the life and intimacy of the parties and the death of Charlotte Pridgeon was concerned. Testimony was then offered, taken in England by deposition, of Mrs. Mary Hanshaw, the prisoner's mother, giving a perfect history of the life, habits and peculiarities of the prisoner, from his infancy until he was fifteen years of age. It appeared that, when four years of age, he fell from a second-story window, striking upon his head, was unconscious from the fall, and ever after acted strangely at times. One of his peculiarities was a ravenous appetite, he devouring anything which came within his reach in the shape of food; a strange habit of breaking out into fits of wild laughter in the midst of ordinary conversation, or of singing a line of some song when conversing, and then resuming his conversation. He was employed as a butcher's boy, and was discharged because he could not remember the location of the customers' houses. That upon different occasions he would lock himself in rooms of outhouses, remaining for hours and days secluded entirely. Hereditary insanity was also shown, his grandmother and great-grandmother were both insane, were on several occasions confined in asylums, his great-grandmother dying in bedlam, and his uncle shot himself while laboring under temporary insanity.

At the age of fourteen he became a sailor, and from that time until he was thirty-three years of age (he was thirty-four at the time of trial), he had followed the ocean; had been sunstruck in the tropics; had suffered with brain fever, and had been struck upon the head with an iron weapon by the mate of a vessel and made unconscious. Testimony of other witnesses showed his conduct after his imprisonment was strange and unaccountable; that he seemed sane, regretted his act, and broke out into wild and incoherent outcries and moanings and wringing his hands, and weeping.

The defense then introduced the testimony of five or six of the best medical men in the city, whose testimony was positive and uncontradicted, that emotional insanity or an insane impulse would be, under all the circumstances of this case, a very probable explanation of the act; that insanity was a disease that such acts of violence were more apt to manifest themselves against one beloved than against a stranger; that if the prisoner, with all his previous tendencies to insanity, and injuries which he had suffered, loving his mistress intensely, promised time and again marriage by her,

was suddenly refused consummation of his wishes in this respect, and bidden to leave her forever, under the circumstances as detailed, *that there was a strong probability that it would produce in his mind a state of mania, or sudden insane impulse, during the continuance of which the prisoner would be utterly unable to distinguish between right and wrong, or to be even conscious of what he was doing;* although immediately *before* and immediately *after* the commission of the act the mind would resume its normal condition, and the power of distinguishing between right and wrong again dominate it.

The medical witnesses—Drs. William Brodie, Morse Stewart, D. O. Farrand, Hamilton E. Smith and A. E. Yemans—were among the most prominent medical men in the State.

The testimony all tended to show that an insane impulse, or delusion, would sometimes mansifest itself in acts of violence, and against a loved object oftener than one disliked; that jealousy was insanity in a lesser degree, and an insane impulse more probable with a person with a weak than with a strong mind.

The main hypothetical question which was put to each of the medical witnesses, which embraced the main points in the case, was as follows:

"Suppose a person thirty-one years old, a sailor half his life; when a child having fallen upon his head and injured, once struck down unconscious by an iron weapon; suffering sunstroke twice so that he was unconscious; having been prostrated for weeks by an attack of brain fever which rendered him unconscious; that he was peculiar in his manner, voracious in appetite, incoherent in conversation, often stopping in the midst of it to sing a song, or laugh violently; supposing such a man deeply enamored of a girl, giving to her all his earnings for four months, she constantly promising marriage and as constantly breaking her promise; if, upon the night of her death, he was with her for thirty minutes immediately previous, when she reproached him for his shabbiness, showed him a picture of another man, told him she was going to live with this man, and peremptorily ordered him to break off his intimacy with her forever; suppose he was always in the habit of carrying a sailor's knife with him about his belt, and he then stabbed her to her death, what, if all these facts were true, was the strong probability; was he, when he struck that blow, in such a condition mentally; would such a man be affected to such a degree that he would be ac ing under an insane impulse, and not conscious of what he was doing?"

Each of the medical witnesses answered the question in the affirmative.

Q. Where do you draw the line between what you call an insane impulse, and the act of a sane man who is jealous?

A. At the point where insanity is the result of positive disease. There may be a condition which presents that of entire health, yet occasionally the developments of insanity occur. These are cases of emotional insanity.

Q. Is there any difference in the susceptibility of a person who is in a normal mental condition to this "insane impulse," and one whose condition has been previously abnormal, diseased in mind or body, and if so, which is most susceptible?

A. The latter, of course.

Q. Are not love and jealousy exciting causes of insanity?

A. Yes, sir.

Q. Does not jealousy shade off into "insane impulse" if it is strong enough?

A. Yes, sir, it is very common.

Q. You speak of jealousy as a cause of insanity; where do you place the dividing line between jealousy as a *cause* and jealousy as the "insane impulse" itself?

A. If a man dwells on it, and thinks of it, it becomes mental disturbance.

Q. You mean, in the beginning it was a *cause*, but, by brooding over it, it leads to an "insane impulse" as a *result?*"

A. Yes, sir.

Q. What would be the probability of premeditation of an act committed under "insane impulse?"

A. Non-premeditation is one of the *indicia* of "insane impulse."

Q. How as to conduct after the act, bemoaning it and attempting suicide?

A. That would be another evidence of "insane impulse," bemoaning it, wishing it undone. The books recognize this.

Q. Does not insanity or "insane impulse" develop itself in kleptomania sometimes, or in house-burning?

A. Yes, sir.

The jury failed to agree, standing five for conviction and seven for acquittal.

A second trial took place the November term, 1874.

Upon this trial Alfred Russell was added to the counsel for the State and J. Logan Chipman assisted the defense. The testimony was substantially the same.

Extracts from the argument of HENRY M. CHEEVER, for the prisoner:

The subject of insanity has occupied the attention, challenged the investigation of many men, eminent in their profession, in almost every land. In all its manifestations of mania, monomania, insane impulse and emotional insanity, it has received careful attention, with a view to determine its nature and its cause. These various forms of insanity mean one thing. They mean, for a time at least, that the mental powers are,

"Like sweet bells jangled, out of tune."

Whether love, hatred, jealousy, or whatever it be that comes to destroy the God-like part of man, the result is the same. My learned brother, the public prosecutor, fears this discussion, and its effects upon the moral responsibility of the prisoner. He tells you "there was a time when murder was murder," and goes to the Garden of Eden for his example. Would to God he would carry us all back to that Garden of Eden, from other places than this court room, from pain, bereavement, agony, disappointment, hatred, death. I wish he could eradicate from men's minds the memory of all that has been, and surround them with all that is pure and noble and good. But he need not have gone back to the garden for his example. In the days of the Salem witchcraft, of the faggot and the stake, "murder was murder," and men, and women too, were burned, whether the act for which they suffered was the result of clear mental deliberation or involuntary.

Murder was not only murder then, but insanity was a crime, not a disease. It was an evil spirit. In that day theologians gave us the definition, and we believed it; then the world became a little wiser, and metaphysicians took it up. They called it *a lack of intellect*. But now we know that it is a *disease*.

How did they test insanity in other days! Not by looking at the act committed, but the individual himself who committed it. Then, looking within themselves, the metaphysicians said because we would have known the act was wrong, and could have resisted the inclination to do it; therefore, he who did it must have known it was wrong, and could have resisted it. Therefore it was a crime. But now we know it is a disease of the brain which affects the mind, simply because the brain is the mind's workshop. If it is a disease, then we cannot hold a man responsible for his acts committed while under its influence; unless you hold him equally responsible for his ravings during the delirium of a fever. Insanity affects the mind and produces action very much as involuntary action of the

body is produced. Do you blame the somnambulist? Do you blame a somnambulist for committing that in his sleep which, in his waking moments, would be a crime? No. Should you, then, blame him when he commits an act (which, in his conscious moments, would be a crime) not in his sleep, as we view sleep, but when his mind is just as surely unrestrained by will as is the mind of the sleeper?

Insanity, then, is a disease, to be judged, not by *your* conduct, nor by theological definitions, nor metaphysical distinctions, *but to be judged solely by the mental condition of the person himself, in connection with the deed.* * * *

There is a wide penumbra between the bright sunlight of reason and the dark eclipse of insanity, within whose shadow walk more men than you or I know. Have you ever stood with a friend, on some lofty pinnacle of some majestic temple, or upon some bold rock that overhung the precipice, and standing thus, has the thought ever flashed through your mind how the slightest touch would send your friend to eternity? Have you ever thought when in such a position, "What if I *should* throw him over?"

Have you never held in your hand a deadly weapon, surrounded by your loved ones, and had the unwelcome thought force itself into your mind that, on the impulse of your will hung life or death to them? Have you ever, in the stillness of midnight, watching by the bedside of a loved one whose feet had well nigh entered the dark valley, whose mind was delirious with fever, whose body helpless with disease—have you ever thought, as to you fell the lot to administer the healing draught, some deadly potion it may be, in excess; but, given for healing, drop by drop, as you measured out that potion when no eye saw you but the eye above, have you over thought: "What if I should give a few drops more?" and has the thought well nigh paralyzed the hand?

Ah! that "What if I should?" was the first symptom of dethroned reason, which, in the prisoner, became the "I will" of insanity. You stood nearer to that dark land than you knew. You had entered that penumbra; thank God, he held you back. * * It is just because, upon the one side of this belt or border land, that shades from sanity into insanity, you will find much sin and a little insanity; while upon the other you will find much insanity and a little sin, that it is difficult for you to say whether this poor man walked within that shadow totally or not. If, in your minds, he was within the shadow, even by the slightest step, you must acquit. You need not wait until you lose him in the darkness, you need not wait until he passes through that penumbra into the

blackness and darkness of total eclipse. If you doubt even where his steps were, acquit him. Acquit with a mute thanksgiving to Heaven that you are passing upon his case, rather than that he is passing upon yours. * * * Perhaps, after all, it is but a question of *majority*. * * *

Now *law* is perfect, because it is universal in its application.

But *laws* are imperfect for the same reason. The law of gravitation, as law, is perfect, because every atom in the universe is subject to it. Laws against crime are imperfect in operation, because every man is not like his fellow, not of equal strength of mind, nor able to control himself, as another might under passion or violent impulse. Therefore, you cannot reason upon a general basis. You cannot reason from your own consciousness. You cannot reason upon any hypothesis; but you must go back to the act, discover under what circumstances it took place, where, when, how committed, the condition of the actor. That is the test. Two men commit the same act; the one is a criminal, the other is not. * * * * Our natures are so in harmony with the outer world, whether our moral or physical nature, that it is only so far as they act in harmony with and receive impressions through the outer world that we are responsible to law, either human or divine. The moment we lose the power of discerning between right and wrong, and of recognizing the consequences of action, that moment we cease to be responsible before the law.

* * * * * * * * * *

A person may often reason more satisfactorily when aided by illustration than in the abstract. Suppose everything had transpired that did in this man's life, up to the moment Charlotte Pridgeon met her death; his early life, injuries, disease, hardships, strange conduct, feeble intellect, love, jealousy; and that, goaded by her command to leave her, instead of plunging that knife to her breast, he had driven it to his own heart; had died, and you were sitting as a jury to determine the cause of that death, would you hesitate one moment over the verdict—"Dead, by his own hands, while laboring under temporary insanity!"

What is the meaning of this? Simply, that you reason back to the intent and motive, and not forward to the result.

He loved her. He loved his own life. Both loves are human. Would he have raised his hand against either, unless that hand played traitor, and rebelled against his head past all restraint?

* * * * * * * *

Who saw this deed done? No other human being, save she who now lies in the narrow house, food for the worms. She knew why,

when, and how that blow was struck; but she passed away before her life blood was dry that had crimsoned his hands; yet did she charge him with murder? No. Staggering into that house in her mortal agony, and with her mortal wound upon her, she said, "I am dying; *some man* has struck me." Those words strike you with peculiar emphasis; why did she not charge him with her murder? Simply because

> "In that dread moment, when her frantic soul
> Raved round the walls of its clay tenement,"

seeking for escape, she knew she had put that upon him which had stolen his reason, and that he was not guilty of her death.

Charlotte Pridgeon, dying, did not accuse the prisoner of her murder. Dare you do more? She knew that during their short life together he had been so kind, loving, generous, patient, forgiving, that in her dying moments these things pleaded "trumpet-tongued against the deep damnation" of such an accusation. * * These physicians tell us that love turned to jealousy produces insanity. This is true. It is not only the testimony of these medical men, but it is experience that tells you this. That prince of writers, of philosophers, metaphysicians, gives us the key to this when, asking the cause of Hamlet's madness, Ophelia tells her father, Polonius, of his strange actions. It seems as though the words were written for this very case.

Polonius says—

> "This is the very ecstacy of love,
> Whose violent property, foredoes itself,
> And leads the will to desperate undertakings,
> As oft as any passion under Heaven
> That does affect our natures. I am sorry——
> What! have you given him any hard words of late?

And then she replies—

> "No, my good lord, but as you did command,
> I did repel his letters, and denied
> His access to me."

And Polonius rejoins—

> "That hath made him mad."

Did Charlotte Pridgeon repel his tenderness and deny his access to her that fatal night? Did she lead him, from the beginning to the end of their acquaintance, a life of hope deferred, of love repelled, of devotion trodden under foot? Did she not taunt him to distraction? She stripped him of his earnings, of all means of making himself decent in appearance; yes, stripped him of his

intellect itself. And yet they will tell you he was in his right mind! * * * He tells you that when she bid him leave her forever, "It was all black and dark before my eyes, and I knew not what I did."

Did he love her? Close by that murderous knife, in its sheath, hung that pouch about his person. In that pouch was her picture.

That picture and that knife met together. They kissed each other, when the knife was warm with her life blood. (Blood was found upon the picture from its contact with the knife.)

And here is a poor little tattered scrap of newspaper that was in pouch that—a woman's pattern—carrying it for her. That speaks for itself! Poor, childlike Underwood, carrying it for her. And here are the three letters she had written him; letters telling him to leave her; letters threatening a separation. And yet he treasured them, almost hugging them to his breast, always, everywhere, believing in her even up to that last mament when that darkness settled down upon him. And here is one of them, one of those that seemed to grapple him to her with hooks of steel:

"DEAR WILLIE:

"* * * I am lonely. I want to see you; but never mind, dear, I shall soon see you, and for good. I think of you always. * * * You must not get discouraged.

"Ever yours,

"LOTTIE."

[Ah! She knew he was discouraged, did she?]

"A kiss, and then good-night."

Now, with these letters from her in his mind and on his person, burning to see and embrace her, with this picture there, this man met her on her return, and she met him—not with love or affection, but with taunts and sneers, and proof of infidelity during her absence, and his love curdled into jealousy, became mania, and he took the life that was to be no longer his.

You have nothing more to do with her. I have nothing more to do with her. I have purposely kept her in the background during this trial. She has come into this case far enough to drag a fellow being to the verge of insanity and death. Your verdict cannot restore her to life. John Randolph once said that in all the vocabulary there was no word like "remorse." Remorse is the mildew that gathers upon actions irretrievable, and gnaws the human life away. Remorse to-day, remorse yesterday, remorse to-morrow, remorse every day, till the grave receives him! He may live, he may know what he is doing. He may take up the duties of an every-

day life and discharge them with a mechanical faithfulness; but he can no more enter *into* life than though he lay, as she lies, eaten of the worms.

Your verdict may acquit him, but it cannot save him.

The jury acquitted him, on the ground of insanity. Under a statute of the State he was sent to the insane hospital in the State prison at Jackson, where, by the provisions of the law, he was required to be detained until an examination as to the question of sanity could be made by the judge of the court who tried the case and the superintendent of the asylum. Underwood's counsel carried the matter to the Supreme Court by writ of error, claiming that such committal was void, because the act was unconstitutional, in that it imposed duties judicial in their character upon the superintendent of the asylum to be exercised by him at his own volition. This judicial power, it was insisted, the constitution vested in the court only. It was claimed that this was, practically, imprisonment for an indefinite period, and might be for life. It was also claimed that it was not a proper exercise of the police powers of the State, in that it was an imprisonment, not to prevent a criminal act, but as a punishment for one already performed. After a full argument, the Supreme Court held the law unconstitutional. Underwood was released from custody, and returned to England.

THE TRIAL OF VANDERPOOL.

First trial, at Manistee, Michigan, January, 1870.

Herbert Field and George Vanderpool, partners in a bank at Manistee, went into their office about noon, on September 5, 1869, and Field was then seen alive for the last time. They were last engaged in settling their business affairs, and apparently friendly. Both men were prominent citizens of a thriving frontier town, both well known and generally esteemed. Field's sudden disappearance, without any known reason, aroused suspicion of foul play, and within two weeks his dead body was found on the lake shore, about a score of miles from Manistee, with the skull crushed by a murderous blow and a rope around his waist that had been tied to some weight and sunk in deep water. Vanderpool had already been arrested, and the discovery was followed by a blaze of excitement throughout the entire State.

A most formidable mass of circumstantial evidence was collected against the prisoner, and the winter following the tragedy he was tried on a charge of murder in the first degree. The progress of

the trial was watched with intense interest. The list of witnesses included the most prominent men in that region. The evidence covered a long line of circumstances, the current of the river, the condition of the bank, the variation of clocks, the condition of patients under certain diseases, the acts of the prisoner—the case being based wholly on circumstantial evidence. The trial lasted nearly two months, and resulted in conviction and sentence to solitary confinement in Jackson prison during life.

This termination of the trial resulted in wide-spread conviction that the feeling at Manistee was so intense that the prisoner did not have an impartial trial. Money was rapidly collected in all parts of the State to meet the expenses of a new trial. Eminent counsel were retained, John Van Arman and D. Darwin Hughes, who secured a new trial and a change of venue to Kalamazoo Circuit. A prominent advocate, G. V. N. Lothrop, of Detroit, and Attorney-General May of the State appeared for the prosecution. Mr. Lothrop, of Detroit, had twice been nominated for the Supreme bench of Michigan, was a counsel of rare eloquence in jury trials. This trial was a battle of giants that acquired great celebrity in the entire Northwest, and resulted as will be later shown, in its order.

It is claimed by the prosecution that shortly before the dismissal of the churches, on the Sabbath morning in question, George Vanderpool murdered Herbert Field in the bank. Together the two men went from the bank into the adjoining shoe store, after eleven clock, and procured witnesses of the instrument which they said embodied the dissolution of their partnership and the settlement of their affairs. Together they returned to the bank, and the theory of the prosecution is, that a few minutes afterward, as Field was sitting in front of the desk, marked upon the diagram, engaged in writing letters, Vanderpool came up stealthily behind him with some blunt instrument in his hands, perhaps a hatchet, and struck him in rapid succession two dreadful blows upon the back of the head; that Field at first convulsively sprang up or attempted to rise; that Vanderpool grasped him by the arm and dealt him the second stroke, when Field became utterly senseless; that the blood stained everything in its immediate vicinity; that the body must have been laid upon the floor, thus farther staining the carpet; that it lay there during all that afternoon and evening, until about nine o'clock, when Vanderpool, having spent the intervening time with his wife and friends, with every appearance of cheerfulness, entered the bank, changed his black clothing for some of Field's, stored in the bank, lifted up the dead man, carried him into the street, descended, with the body, the long staircase to the landing,

attached to it a rope and weight, launched it into the river, in a row boat towed it down the stream to near the entrance into the lake, there sank it, returned to the bank, again changed his clothing, which could then be hardly otherwise than stained with blood, and proceeded first to a physician's and then to his home, where his wife swears he slept throughout the night, peacefully so far as she was able to perceive. To support this theory is a mass of circumstantial evidence, which will appear during the trial, and which it is not necessary to dwell upon now. Of course if it could be shown that Field was seen alive after noon of September 5, 1869, the theory of the prosecution fails, and this was the point against which Mr. Vanderpool's counsel directed their assaults.

Herbert Field is supposed to have been a little over twenty-one years of age when he met his death, having been born in 1848, at Lewiston, Maine. His father's name was Stephen Field. Herbert seems from early youth to have been of a restless, active disposition, prone to change, and while a mere lad met with several accidents, the results of youthful rashness, which put his life in jeopardy. At thirteen he left his home and roved about, visiting Washington, Richmond, and other cities of the South. He afterwards shipped as a sailor on a Government transport carrying supplies to the Union army at New Orleans. In 1863, when but fifteen, he sailed from Boston in the ship *John Tucker*, bound for a South American and European voyage. In her he made a tempestuous passage round Cape Horn, the crew undergoing great privations. He then enlisted on the United States ship *Lancaster*, where he remained some nine months. Afterwards, in an English barque, he sailed to Liverpool, thence to Russia, and was shipwrecked near Riga, losing all his clothing and a large amount of money in gold. In the autumn of 1865 he returned to Boston, and seemed to have given up his wandering habits and to be desirous of engaging in settled pursuits. He went through a course of study at the Commercial College at Auburn, went to New York in search of a situation, and finding none, made a voyage to the Caribbean seas again, as a sailor. Soon after his return he visited Lewiston again, and Miss Hill, whose name has often been heard in connection with the investigation of his murder, proposed to educate him, and he commenced studies at a literary institution, which, however, was soon necessarily abandoned, in consequence of his health failing under confinement. Both he and Miss Hill then removed to Manistee, and in December, 1868, Vanderpool, who is supposed to have first met Field in Chicago, also arrived there, a co-partnership was formed, and the banking business was inaugurated under the firm name of "Van-

derpool & Field," Miss Hill furnishing Field the money which he invested, to the amount of some $7,000. He was a young man of very frank, engaging manners, and soon won the friendship of the entire town, being universally liked, though Vanderpool was generally regarded as the better business man of the two. Field was quite talkative, even concerning business affairs, displayed money in his possession constantly, and was probably looked upon by the people of Manistee as somewhat young, thoughtless and inexperienced.

I understand that George Vanderpool's early life was spent in Central New York; that he lost his father while quite young, but has a mother and brother living. He came to Michigan when a young man, was employed in several capacities in the lumbering trade at Muskegon, and acquired great skill in "running logs." He was in the army for a long time, and afterwards employed in several lines of trade in Muskegon. Shortly before going to Manistee he married his wife in Central New York. Until the charge of killing Herbert Field was preferred against him, his general reputation appears to have been good for honesty, sobriety, ambition to progress in business. It is supposed that when he entered into co-partnership with Field he possessed about $2,500 in money, a large part of which, however, he had borrowed to enable him to engage in business.

The theory of the defense was an *alibi*, and lack of certainty in The People's testimony—no motive to kill Field, no time, that Field was alive and well when Vanderpool left him.

Messrs. Thomas B. Church, B. M. Cutcheon and Geo. W. Bullis appeared for The People, and S. W. Fowler, E. E. Benedict and T. J. Ramsdell for the defense.

The trial lasted three weeks. Experts from Ann Arbor testified as to the blood. The whole State and the Northwest took a deep interest in the incidents of the trial and tragedy. Men and women packed the court-room daily; newspapers heralded every word of evidence or point of counsel. The evidence was romantic. The prisoner's statement was over three hours long, and a full, complete and careful detail of all he did on the fatal Sunday delivered in a graphic and persuasive manner. On this was built the theory of his defense. He admitted taking up the carpet and burning part; said it was filthy and worn—stained; that he had the nose bleed, and Field cut his finger in a scuffle; that he was sick and changed

clothes in consequence; that they settled, and Field left at mid-day; that he was innocent; that he feared lynching when he made the "pin letter" as a *ruse*.

Very many witnesses were examined; some on slight circumstances, and more as cumulative evidence. Counsel were untiring in their zeal and acute in the arts of reasoning away and accounting for circumstances. Gen. CUTCHEON'S argument was most graphic and inspiring; Mr. CHURCH'S the most impressive; Mr. FOWLER'S the most pathetic. But as arguments are given still later of men even more renowned, that part is at present passed with a brief quotation from Hon. BYRON M. CUTCHEON'S remarks:

"*Moral certainty* is not absolute certainty." It is not the exclusion of all doubt. It is that certainty that convinces and directs the understanding and satisfies the reason and judgment of those who act conscientiously upon it (*People v. Webster*), that leads us to act in the gravest concerns of life in our own affairs.

One year ago Field had a capital of $7,000; Vanderpool $2,300; bankers on a slender capital. They become dissatisfied. Field commenced to draw out. Vanderpool distrusted him. He took his money home to keep it nights. He changed the combination lock. He claims Field as a defaulter. But two men swear the books were tampered with. Friend saw them Saturday; Ellis on Monday. They were changed, $400 to 1400; $700 to 1700. Here was the motive. He admitted the forgery. Without the forgeries, Field had a credit of $3,679.38 on Saturday night. The greed of gain and fear of ruin made the motive. It was Vanderpool. The opportunity was ample. They were alone; curtain down. The means was the hatchet. It was marked with blood and fitted the wound. Field was seen going in and never seen out alive again. There were his shirt cuffs, his envelopes, letters, papers, pocket-book, books with forgeries, and *human blood!* Blood on the floor, on the carpet, on papers, on stairs; cracks of floor were filled with blood; covered all over with fresh ink! Where is the carpet? Burned! Where the clothes? Burned! By whom? Vanderpool! From the bank he went with Field's clothes on; in the bank was found the bloody spots; in the bank the charred remains of carpet, pants and vest and shirt! At the bank and cleaning up was Vanderpool on Monday before the dawn was. From all these facts but one inference is drawn: that Herbert Field was murdered in the bank, and George Vanderpool knew it, for he was there. He cleaned the blood; he cut the carpet; he scrubbed the floor; he burned the hay and carpet. The destruction of evidence of a crime is confession of crime.

They say he was cheerful! But

"One may smile and smile and be a villain."

We can see him enter, change his clothes, lift the bloody form, take it to his boat, tow it down the stream to the lake, cut loose, and let it, weighted, fall to the depth below. A little eddy, a gurgle, a ripple, and farewell to Herbert Field. A grey-haired mother may wait long his coming in the far-off sunrise, but in vain. The bloody floor cries *Murder!* The bloody carpet says Murder! The bloody finger marks say Murder!

The ink marks, carpet, false entries, a guilty conscience, through a guilty face, say Murder! The human hulk is drifted from its anchorage; wind and wave and current fights the guilty man. The hulk is stranded on the yellow sands. The hands all helpless, eyes once full of life shall see no more; the lips are cold and dumb; the tongue is silent. But these are talking all at once; they speak an awful language. They tell the dreadful deed!

The jury said guilty, and Vanderpool was sentenced to a life confinement in Jackson prison.

But a new trial was granted, and a change of venue to Kalamazoo.

THE SECOND TRIAL OF VANDERPOOL.

The facts of the first trial being familiar, nothing new need be added to carry the reader through this intensely interesting inquiry. After the conviction and excitement of the first trial, the public took sides. A change of venue was had to Kalamazoo circuit, where a most exciting trial took place, lasting nearly thirty days, and resulting as will later appear in this report. Experts from Michigan University to analyze the blood; learned counsel from abroad, and the deep mystery of the trial, attracted vast crowds to the court-room and made all proceedings intensely dramatic and interesting. It was clearly *a battle of giants* from the first. Hon. G. V. N. Lothrop, the leader of the Michigan bar, an advocate of rare attainments and legal accumen, appeared for The People, with Attorney-General May; and John Van Arman, for the defense, assisted by D. Darwin Hughes, of Grand Rapids.

Mr. Lothrop is six feet high, nearly 65 years of age, erect, strong, hair turning gray; short, closely trimmed beard, with the air and dignity of a Senator. His commanding manner, his well-rounded periods, his fluency of speech and excellent choice of language, never over-reaching in his argument, give him force and elegance of expression and make him a counsel of great influence with courts and juries.

Throughout this trial he bore himself with a quiet dignity, and closed with an appeal most touching and graphic, that seemed to lift the walls of the building and reveal the murderer in the midst of his horrible crime. He never turns to wit or lowers himself to become personal or answer side allusions.

The argument of D. Darwin Hughes for the defense, on the twenty-third day of the trial, was the most ingenious and artful effort of all. With no attempt at eloquence, but a plain, candid business-like statement, enforced by an earnestness and dignity of manner at once convincing and effective, he held the attention of the jury nearly two days in various propositions, tables and illustrations, placing the defense in its strongest light and plausibly explaining every occurrence that pointed to guilt.

He commenced by an exhaustive review of the testimony, of the danger of circumstantial evidence—how it often led to conviction and punishment of the innocent—how it seems to surround one in a network of trouble, all of one direction, when a single break might apply all facts to other parties and leave the accused to freedom. He doubted that the real Field's body had been found! He considered the evidence very weak on identification. He went over each item of evidence in detail, as to the burning of clothing, accident of the spitoon, spots of blood; paid a high and just tribute to the fidelity of the prisoner's wife in his deep distress, and bitterly denounced Gen. May's attack on the defendant.

In this review, as in all his argument, he measured his sentences and weighed his words with precision, and they fell with weight upon the jury. "I need not tell you, gentlemen," he said, "that the circumstances must *not only all be consistent with guilt, but inconsistent with innocence, to convict this defendant!*" He analyzed the question of blood on the floor with great thoroughness, and announced, as a proposition, that there was no blood on the floor of the bank, in guilty quantity, if at all. He argued,

1. That the blood might come from natural causes—the teeth, the nose, the dog—that a few drops in filthy water would greatly magnify its color; that the doctors disputed whether it was blood

or ink—whether it was from a fish or a man! While from the testimony of Dr. Ellis, such a wound as Field received would have produced two quarts or a gallon of blood!

2. This amount left, then, at twelve o'clock Sunday, until five on Monday morning. Yet the floor was not wet, and no blood had then been noticed. Vanderpool was sweeping out dust and blood by the quart, unnoticed by the sheriff! Impossible.

3. In seventeen hours it would have run down through into the basement, while nothing of the kind was discovered.

4. No one saw it when fresh, and only found it by magnifying glasses, with nothing like stains on their hands from any color. They were magnifying a great uncertainty!

5. All that was seen on the floor, carpet and wall may have been the contents of a spitoon, and it was wonderful that nothing did disclose human blood corpuscles to a certainty.

6. If there had been blood, Secor would have seen it.

7. It would not have been cleaned in an open manner.

8. The water would have left traces on the floor.

9. The blood would have stained the sidewalk.

10. The cleaning itself was not suspicious. It was a new business. It was a proper occasion. It needed cleaning; it needed a new carpet.

11. The time was not unusual; it was early, but required to be early. Hurd was going to his store, Wilcox to his office. Visitors would soon be coming in. It must be done early and not interfere with business.

12. It was openly done, in plain sight, in the usual way. The carpet thrown out on the walk. Hopkins was there at six, Secor a half hour later. The cutting of the carpet was to take it from the safe and the stove. It was unavoidable.

13. The ashes in the stove disprove the blood. The prisoner owned he burned the papers and clothes. He did not burn the carpet until Wednesday. The "bloody carpet" in the bank up to that time! Would not a murderer have seen that the fire did its work more effectually?

14. The testimony of Ramsdell as to the time he left the store and rattled at the bank door to get in, that there were four persons in hearing, had Vanderpool attempted the deed—not a wall, but a thin partition between—he must have selected a busy hour, high twelve, for murder! Do you believe, gentlemen, that, having murdered Field, he put on his clothing and made no concealment of the fact? The thing is improbable. The theory of the prosecution makes him use violent means to murder—to use it in the

hearing of four men. There was a scuffle in the bank, a rattle at the door. It all ceased; but all this is explained.

15. The bank door was open all that Sunday afternoon. Mrs. Scribner saw it open at four; Ford confirms her. He says it was half open at that hour.

16. While a hatchet was in the bank, corresponding to the wound on the head of the body found, there is no evidence that it was bloody, or showed any marks of having been cleaned; but such evidence is shown to be wholly wanting. If Herbert Field was killed in the bank, he was killed by that hatchet. That is the very instrument one would select as the one a murderer would use. But we have demonstrated that it could not have been used and not show some signs or marks, and I say that circumstance alone is a vindication of Vanderpool. They must repudiate the hatchet or acquit the prisoner.

17. There was no blood of suspicious quantity on the sidewalk, stairs or platform where the body must have been taken to reach the river. And the *time allowed was too short.* I have drawn up a table; I have figured closely on the prisoner's movements, as shown by the evidence. He left the house at 9.30 and returned at 10.55—eighty-five minutes gone altogether:

	MINUTES.
Walking to the store	5
Walking to Ellis House	3
Walking to the boat	5
Walking from the boat	5
From the boat to the store	5
Back to the bank to let in the dog	5
Going to the shop to look in	5
Going for the medicine	5
Going to Dr. Fisher's	3
At Fisher's	15
Going home	5
Sitting on lumber pile near *Times* office	5
Before starting	5
	71

This would leave him fourteen minutes to spare. It would take five minutes to reach the bank; five more to go to Tyson House; five more to see that the coast was clear; ten to get a boat ready; five to get the iron for anchor and fasten to the body; five to light up and change his clothes; ten more to get the body to the boat; five in boat; thirty to row down the stream; five more to care for the boat on his return; five more to change his clothes; five more to go to Fisher's; twenty that he stood there—120 minutes in all.

Thus he lacked thirty minutes of time enough to do the deed; and this is the most probable story.

Then his appearance on Sunday did not indicate guilt. In the one instance he must have nerve enough to commit a crime, and the next breath look as if he had the cholera. How would they have him look if innocent; how, if guilty? Had he committed the murder at 12 o'clock, he never could have lived through that afternoon out of sight of the bank, and move the traces of the ugly crime. In the afternoon, he goes to meet his friends at the boat. He is talking with sheriff Secor. Where was his anxiety to get rid of a body? Of all the weak theories the weakest is, how to dispose of the body. While at the hill, Mrs. Vanderpool says, "there comes Field!" But he was not confused. Put yourself in his position. By their theory he had just murdered Field. Do you suppose that, if Vanderpool had murdered Field, and the dog saw him do it, then the dog comes along; he had been in the bank, and if Vanderpool did it, he would go to coax him back. Would the dog come for assistance to the master's murderer? Yet they say he came and played with Vanderpool.

He looked pale on Monday. Had he not been pale all the week? His sickness accounts for that. They say he wrote the Brown-Nolan letter. That is against him, but it is impossible to tell what one will do in the face of such public sentiment. In Lord Coke's time a man was accused of the murder of his niece; he had been last seen whipping her. She had said, "Dear uncle, do not kill me." He was told if he did not produce the girl, the trial would take place. He employed a girl to personate the niece, but it was detected; he was convicted and hung. Two months later the real niece returned from a neighboring county, where she had fled for protection from her uncle.

They allege that he said they would find blood on the carpet, when nothing had been said about blood. Durham says Conover had pointed to the blood. He laughed when they told him in jail that Field's body had been found, and said, "You can't make me believe that." But his conduct was consistent throughout. He had dissolved. He went to his bank, found it in confusion, and he cleaned the bank. Field was a reckless bookkeeper and no manager.

The books showed $2,000 more assets than liabilities. He had no motive to kill Field. He had a promise of capital from a relative. They are forced to say he did the deed for money. No money has been found except $100. This they call stolen money! It is not identified. It belonged to Vanderpool as much as to Field. Think-

ing of necessities—a run had been made on the bank and all the cash drawn out—he put some gold where his wife could find it. If he robbed Field, what became of the money? Field was his friend. Did he murder him for money? How preposterous!

Who was the man in the boat? Here is a mystery. A man in white in the boat, out on the lake. They say Vanderpool. But there is abundant proof it was not this defendant. He was not dressed like him. The man in the boat had on light clothes. If he changed for Field's clothing, why was it not marked? Which suit was it? Why not wet or soiled with blood? Why would he whistle for his dog? Why would he have remained in the boat till Fralich approached within a few feet of him, with the dead body in his keeping?

I have attempted, gentlemen, to show that these theories are inconsistent with guilt and consistent with innocence. Our theory is, *that George Vanderpool did not kill Herbert Field.* We have a complete *alibi.* We admit they were together on Sunday noon in the bank, but say no murder was committed there. They were there as friends, not to commit a horrible crime. Field was alive after the prisoner left the bank. He was seen by three witnesses, whom you have heard—Mrs. Springer, Charlie Springer and Mrs. Lot. They cannot be mistaken. All efforts corroborate rather than impeach them. The People must establish their case to a *moral certainty,* and how preposterous their story is. You must accept these explanations when they are so reasonable and so established by evidence.

Gentlemen, I have performed my duty; it remains for you to perform yours.

Mr. John Van Arman, of Chicago, spoke for the prisoner in a labored effort of nine hours, during which he seemed intensely in earnest, and at times quite severe in his attacks on the People's case. He is peculiarly suited to criminal defenses. Of strong, thick-set German frame, smooth, pale face, strong lungs and iron will, full of ingenuity and experience, he carries his client's case through the courts with a determination to win. He said to the jury:

None of us can understand this case but the one in danger. We cannot rid ourselves of a coolness in the concern of another. But one has already felt the chill and darkness of that dread place which your verdict, if unfavorable, will consign him. A year ago and his condition was as fair as yours. He was not rich, but riches are not needed to be happy. He had his home and the respect of his neighbors. What more could he desire? But on a sudden, in

the midst of fair prospects, his once quiet town resounds with the cry, "Field is murdered by Vanderpool!"

From that time two parties arose in that town. In a day or two the body was found in the streets of Manistee. Then he was tried, not by a jury, but by the populace. He was taken to a prison cell. His wife turned from their home, in the bitterness of desolation, in the depth of despair. * * You may have heard the question, "If Vanderpool did not kill Field, who did?" Field is dead; the rope and body are both found in the river below. Of the three thousand five hundred people in that village, who was less likely to do the foul deed than he? Being in the bank does not show guilt. It was day. * * * Where is Field? I cannot call upon the great deep to give up its secrets. I cannot call back the ghost of the departed. But if I could I would. I would call him back from this untimely taking off and bid him, with his cold, blue lips, reveal the truth! And you would see where guilt is charged innocence remains. * * * I do not desire to appeal to your sympathies. I claim his discharge as a matter of right. I insist upon this whatever your opinions were. Although you saw strong circumstances of guilt, I beg you to think that it is not a difficult thing to array circumstances which would as readily apply to the real offender were he obtained. Followed, as I shall be, by a man of eminent genius and talents, I warn you to remember that I have explained each and every circumstance in the light of reasonable innocence.

But you must pause and analyze the consequences of that conviction he would force upon this respondent! Be sure, and be guarded, and be not deceived by undue weight attached to facts by the acumen of counsel interested to convict. I ask you to use your own judgment, to make new applications of facts for yourselves. The respondent is entitled to the clear, unbiased individual judgment of each and every juror and each and every doubt. And, if he is convicted, and that conviction is wrong, and sometime hence it should be found that after all he is innocent, and in consequence of this terrible doom that you have inflicted upon him, reason should have tottered on her throne, and from being a bright young man, in the flower of his usefulness, he should become a raving, driveling idiot, and that wife, whose sorrowful face has looked in your eyes for the last four weeks, had gone down, heartbroken, to an early grave, it would not be one twelfth part of this wrong to *you*, sir, but to *you*, and to *you*, and to *you*, will lie this crushing weight, upon your conscience, in your slumber and your

waking hours, preserve to the day of your death, to upbraid your conscience with a sense of its dreadful wrong!

As a convenience to his own, no unwillingness to encounter a protracted session should obtain, and no anxiety to get home will excuse, until each juror reaches his own sound judgment from the argument of counsel and the evidence in the case. If he does short of this, he violates his conscience, and that will whisper to him often, when alone, as he lies down at night and rises in the morning, if he has done a cowardly thing and violated the laws of the land.

I cannot speak to you of the terrible consequences of a verdict of guilty. In contemplating that I must think of my own wife, my own family, and how such wretchedness upon one once so happy, and then so miserable. You too have faithful wives and children. You will think of them, not for the purpose of overcoming your reason, not of swaying your judgment, but for inclining you to pause and think solemnly of the work we are engaged in. Remember that a man's liberty and the light of heaven that now shines upon him are as pleasant and dear to him as they are to you, and that a verdict of guilty, if pronounced against him, shuts him out forever from them all. If compelled to do this, do it sadly, unwillingly. But I solemnly believe, when you do your whole duty, and give him the full benefit of the doubt which these strange circumstances of this mysterious case have left, I beg you to do it, and when you stand for judgment on your own account, the deed shall smile by your side, and, like an angel, plead trumpet-tongued for your acquittal.

Mr. Lothrop's manner was in striking contrast to his opponent. His rounded periods, his impressive words, his straightforward manner, attracted every eye, riveted every ear, and carried conviction to every heart. But still, as in his graphic way, he set forth Field's good and loving disposition, his winning ways, his cowardly murder that left his murderer beyond human sympathy. During such passages the accused looked hard at the table by which he was sitting. Mr. Lothrop spoke with terrible earnestness of the facts that pointed to the prisoner's guilt. The audience gazed in silence and listened attentively to every word.

He said:

I know nothing, gentlemen of the jury, of your impressions or prepossessions in this case. Each and every one of you were and still are entire strangers to me, but I assume that you came prepared to hear and determine this case on the evidence, and I ask no

more. I shall seek to hold you to the forms and rules of evidence already mentioned in your hearing.

It is indeed your duty, each one of you, to come to this case as an individual, but faithfully to confer with each other and reach your conclusion after a full and fair conference. Indeed, after all of this, if after all fair effort, with due respect for personal pride of individual opinion, in a fair conference of reason, you fail to agree, then I concur—but not till then—that it is your duty to stand. But bring with you the whole stock of your acumen and understanding before you reach a conclusion that you have discharged your whole duty. * * *

We all remember that Herbert Field, on the fifth of September, '69, disappeared, and by no accidental circumstance. We know it was no eccentricity of youth. *We know he was murdered!* and a murder so detestable, that even the cold and impassible nature of my friend was compelled to pronounce a cowardly murder. * * *

There was not a living soul that I know of in the world, standing in more social relation with him, that was not friendly to young Herbert Field—a boy just verging into manhood, with hopes and impulses, noble, lovable and generous. Who could seek to do him wrong? The doors of the best families open to him in Manistee. The best men for his associates.

Suddenly, as if it were the going out of a light, he disappears.

It is found when the body comes to light he was taken unawares. A cowardly assassin had quenched all the glory of his young and hopeful life by a blow with a hatchet or weapon in his skull from the rear! Now, gentlemen, if ever there was an inquisition for human blood it is to be made in a case like this. The people of the State cannot afford that such a cowardly murderer as his go unpunished.

Sympathy! Sympathy for whom? There is one place where it should never enter—the jury box and the judge's bench. He may have friends, relatives, wife and children, but so far, gentlemen, as operating to shield, it only makes his crime, if guilty, more detestable. "He who has a wife and children, has given hostages to society!" * * * *

The burden of proof is on the People, and their evidence is circumstantial, say our friends! True. But not one day of your lives do you live without relying on circumstantial evidence. You cannot walk a block without meeting circumstantial evidence in common affairs. You got up yesterday morning, and saw snow. It was snow as surely as if you had seen it fall. You know it fell. It is here as a fact. You may see on it the track of a cat. You

know that a cat has crossed in that direction. A man drives up with a horse covered with foam. You say he has been driven rapidly. You see he is shod. It is the work of a man. You did not see the shoe nailed on. This evidence is all circumstantial.

An able author has written a book citing eleven, really strange cases of conviction on circumstantial evidence, and one—only one —wrongfully convicted!

Our friends name the Parkman and Webster case, and try to show that the body of Field may not be Field at all. But Dr. Parkman's body was cut to pieces, limb from limb. The head was never found. It was consumed in a crucible, smelting everything that was ever put into it. But even this left traces of detection, for the work of the dentist refused to give way to the heat in the crucible, and the murderer was convicted. * * * *

No motive? Field had been trying to sell out and go into other business. He had drawn five hundred dollars, and this did not please Vanderpool. Paper was falling due. Vanderpool needed money. Why he said, "I am taking my money home every night and sleeping with my revolver under my pillow." Afraid of Field, the boy! A revolver for him!

Here is just the motive. A division, a wrangle. * * They come together on Sunday. They execute papers. They are in the bank alone. That money taken from that bank may cripple the bank. Credit is low, money is scarce. The fatal time has come. A muffled noise is heard, and then all is still. In a half hour the defendant goes out of the bank clothed in the pantaloons of Field. He has Field's dog with him. He stays during the afternoon with his friends. Night comes, and for a time he disappears. He has gone from their sight. Morning comes, and finds him in the bank so early as to attract attention. He cleans the bank, removes the carpet, burns a portion, scrubs the floor. In a little while it is rumored that Field is gone! He instantly charges he has run away. Suspicions of blood are seen. He is arrested. A few days later the body comes ashore. It comes to tell how Field was slain! He manufactures a letter, pricked with a pin, in jail, to show two sailors did the deed for money. That is detected. * * * *

I repeat that these facts speak in unmistakable language of his guilt. They tell a story that cannot be disputed, even though one rise from the dead. Murder, though it hath no tongue, yet shall it speak a miraculous language. All of the mist rises up before us here, the obscurity that surrounded the case has disappeared. It seems as though the walls of that bank were lifted up and the bright light of that September sun should stream in, and there,

gentlemen of the jury, in the light of all this evidence, you see, standing over the body of his prostrate victim, his hands dripping with his blood, the murderer of Herbert Field. It is not *I*, gentlemen, who say this. It is not *I* who condemn or convict this man. It is not *you* who condemn or convict, but that inscrutable Providence that pursues rightfully the path of the transgressor. It is that almighty power that no human cunning can overcome. The very stones cry out against it.

Gentlemen of the jury, in the name of that innocent blood, of that young life so cruelly slain, in the name of The People of the State, I ask at your hands the verdict of Justice upon the murderer of Herbert Field.

The jury stood nine for conviction, three for acquittal.

THE THIRD TRIAL OF VANDERPOOL.

After the disagreement of the jury on the second trial in the Kalamazoo circuit, the venue was changed to the Barry circuit, and the case came up for its third trial in August, 1871, before Judge Hoyt of that circuit. The State was represented by E. S. Eggleston and Thomas B. Church, of Grand Rapids. The prisoner was defended by D. Darwin Hughes, of Grand Rapids, and Henry M. Cheever, of Detroit.

The trial commenced on the eighth of August, 1871, but several days were consumed in obtaining a jury, so that it was the fifteenth of August before the introduction of testimony began.

The trial lasted twenty-seven days, amid most intense excitement; the court-house in the city of Hastings being crowded from day to day; the audience filling not only every seat, but every available standing place. The arguments of counsel occupied five days.

PERSONNEL OF COURT AND COUNSEL.

Birney Hoyt, the judge of the court, was but thirty years of age at the time of the trial. At the outbreak of the rebellion, he entered the army as sergeant of Company A, 5th Michigan cavalry;

participated in the battles of the war; rose to the rank of captain, and, upon his return from the army, passed through the law department in the University of Michigan;. was admitted to the bar in 1867, and entered upon the practice of his profession in Grand Rapids. He was elected judge of the Barry circuit in 1869, and this was among the first cases tried by him when on the bench. He showed, throughout the trial, a clearness of judgment and impartiality in his rulings, and ability in discrimination in the points presented by counsel, which commended itself to the public and the bar.

E. S. Eggleston, junior counsel for the prosecution, born in Batavia, New York, in 1825, graduated at Albion college in 1849, was admitted to the bar in 1851, and soon after became a partner of Judge Withey, now of the United States district court. He had been prosecuting attorney of the county, was United States consul at Cadiz, Spain, during the war, and had become one of the most prominent members of the bar of Western Michigan.

Thomas B. Church, senior counsel for the prosecution, was born in Massachusetts in 1820; graduated at Trinity college, Hartford; came to this state in 1842, and began practice in Grand Rapids; had been a prominent democratic politician; filled the office of prosecuting attorney; was a member of the state legislature, mayor of Grand Rapids, member of the state constitutional convention, and a candidate for congress on the democratic ticket. He conducted the first trial on the part of the prosecution, and it was due largely to his ability and the management and preparation of the case that a conviction resulted. He is regarded as one of the ablest advocates and criminal lawyers in Western Michigan.

Henry M. Cheever, junior counsel for the defense, was born in New York State, in 1832; graduated at Michigan University in 1853, when twenty-one; studied his profession in the city of Detroit, when twenty-two; commenced practice in 1854; avoided all political life and devoted himself exclusively to his profession. He is tall, slim, with brown hair and beard. As a lawyer, Mr. Cheever holds to-day a rank with the first at the bar. He has the rules of evidence at his finger ends, and has studied thoroughly the decisions of our Supreme Court, which are rapidly becoming a great body of laws, covering cases of almost every description. His cross-examinations are the admiration of his professional brethren, and the terror of untruthful witnesses. He has a way of stripping falsehood of all its covering and showing it in its naked

deformity His arguments are uniformly good. He never talks for the sake of talking, and arranges what he says in a concise and logical form, that makes it exceedingly hard to break through. He never repeats and never becomes tedious; having that rare faculty of always knowing when to stop.

D. Darwin Hughes, senior counsel for the defense, was born in New York state, in 1823; admitted to the bar at twenty-one; practiced his profession in Marshall a number of years, and moved to Grand Rapids in 1869. He devoted himself exclusively to his profession, keeping entirely aloof from politics, and ranks among the ablest lawyers in the state, as a counselor and advocate, both in the Supreme Court and the trial of cases before a jury. He is one of the most skillful and able of criminal lawyers, and justly stands at the head of his profession.

The evidence elicited and arguments produced on this trial rendered it celebrated. Resting entirely on circumstantial evidence, it was one of the most remarkable cases in the criminal annals of the Northwest. Intense excitement prevailed throughout the state during the trial, prevailing sentiment, however, being in favor of the guilt of the prisoner. The evidence for the prosecution was the same, substantially, as it had been on the two previous trials. The defense differed radically from the defense on former trials, with new and other testimony of great importance.

A remarkable feature of this trial was the attendance in court, from day to day, of Mrs. Field, the mother of Herbert Field, who it was alleged had been murdered. She sat most of the time closely veiled, and also was closely watched by officers, as it was feared, and with reason too, that she might attempt violence upon the man who she believed had murdered her son.

Upon entering court, the first day, seeing one of the officers, who she supposed was Vanderpool, she stepped in front of him, and raising her hand to Heaven, exclaimed, "Where is my son; where is Herbert Field? Oh, wretched man!" Again, at the close of the trial, as the counsel for the prisoner were leaving the city after they had taken passage in the carriage which was to convey them to the depot, she stepped up and exclaimed, "The blood of my son is in Michigan, and will yet be avenged upon Vanderpool and his defenders! You will have your share of the punishment, and I shall meet you at the judgment!"

The prisoner was attended throughout the trial by his young and

beautiful wife. She sat by his side day after day, in the court during the trial, and occupied the cell with him in the jail. Vanderpool himself, like other prisoners known to tradition and history, found, while in jail, not his flower, like Picciola, but a pet in a beautiful white kitten, that strangely came to his cell on the very day of his incarceration, and remained throughout the entire trial, refusing to stay anywhere else, and left as soon as he was acquitted. The prisoner was an educated man, with talent for drawing, and his cell was adorned with drawings and etchings from his own pencil.

The theory of the prosecution, that Field had been murdered in the Manistee bank between eleven and twelve o'clock at noon, and that, during the early evening following, the prisoner had removed the body and all evidences of the murder, which had not been combatted on the former trials, was repudiated by the defense upon this. Taken in connection with the new branch of testimony, as to the finding of a strange boatman adrift in a small boat some two weeks after the disappearance of Field, and at about a place in the lake from which it was insisted the lake currents and the winds would have carried the body, placed the disappearance of Field at an entirely different time.

This new theory of the defense was one of the most interesting points of the hotly contested trial. During the days in which the jury was being impaneled some amusing incidents occurred; one of the jurors, on his examination, having admitted to have read one of the counsel's arguments on the former trial, was asked by Mr. Hughes, "Why didn't you read mine?" To which he replied, he missed that number of the paper. "He can congratulate himself on that loss," said Mr. Cheever. "Yes," responded Mr. Hughes, "I had to read it, and I know." Another being asked how long he had lived in Barry county, answered nine months; and that he had lived twenty-six years and one month before that in Eaton county. He was asked, "How old are you?" and answered "Twenty-six." "Twenty-six!" said Mr. Church, inquiringly, "Twenty-six years and one month in Eaton, nine months in Barry, and only twenty-six years old; how do you make that out, sir?"

"Oh!" said Mr. Cheever, "He does not count the time he spent in Barry county as a part of his life."

The testimony of the prosecution was substantially as on the former trial. That Field and Vanderpool were partners in the banking business, in Manistee, until September 4, 1869, Field having seven thousand and Vanderpool two thousand dollars in the business. That Field had become dissatisfied; that both were seen

to enter the bank together about eleven o'clock Sunday morning, September fifth, and Field had never been seen alive afterwards. That September seventeenth Field's body was found on the beach of Lake Michigan, near Frankfort, twenty-five miles north of Manistee. Field had been living with a maiden lady named Rachel Hill, whom he called aunt, and who had loaned him his banking capital. Monday morning, September sixth, between five and six o'clock, Vanderpool was seen washing out the bank, and when he was asked as to Field, said he had run away and taken some of his (Vanderpool's) money. Large portions of the carpet had been cut out and burned in the stove, shreds being found therein; the floor where the carpet had been cut out had been scoured, and was wet; Vanderpool acted confused during the day, forgot the combination of the safe, and could not open it; and drops of blood were found just outside the bank, leading down some steps to the river. This blood, expert testimony said, was human blood; which testimony had never been contradicted or explained until this third trial, by the defense. On that Sunday evening, parties coming down the river in a canoe heard a splash in the water and saw a person crouching in a white boat and paddling down stream. During Vanderpool's imprisonment, it was shown he had written letters to prominent people in Manistee, giving them to his wife to be mailed in New York, purporting to be signed by one Nolan, stating that Vanderpool was not guilty. Red spots, claimed to be blood, were also found on the carpet which was not destroyed. A newspaper with three bloody finger marks on one side; a hatchet, cracks in the floor, moist with a red substance in them; and some human hair adhering to the newspaper were found; the body had a fracture on the head; it was found with a piece of rope tied with a sailor's knot about it, with a slip noose, as though a heavy weight had been attached and had worked loose; on the left arm of the body found was an India-ink tattooing; the pants on the dead body had the name of Herbert Field upon them; the body had a ring, identified as Field's, and a twenty dollar gold piece which he had been seen to have. It was shown that, on that Sunday evening, about ten or eleven o'clock, Field applied for medicine at a physician's, saying he had a diarrhœa. The bank books showed alterations under date of September 1, 1869; in that money drawn by Field that day, seven hundred dollars had been altered to seventeen hundred, and in another place four hundred had been altered to fourteen hundred. After Field's disappearance, Vanderpool showed a receipt acknowledging full satisfaction, and a dissolution, signed by Field.

The prosecution called Jackson B. Wilcox, a dentist who occupied rooms over the bank at the time of the murder. He testified to having been also early up on Monday morning, and having seen Vanderpool at the bank; to having seen blood on the steps at the side of the bank leading down to the river. On the testimony of this witness was founded one theory of the defense on this third trial. On cross-examination the witness testified that when he went down the steps at the side of the bank he walked on the opposite side from the blood spots; that he had been a traveling peddler; traded horses; had been living in many places, a short time in each; that he slept in his office on that Sunday night of the disappearance; that he avoided the blood spots because they struck him as unusual; that on Wednesday following he was under the bank building; that others were digging; that when others came in to dig, hunting for signs of the murder, he went to a widow's near by and asked her to let him saw wood, telling her he wanted to get away from the bank building that afternoon; did not know that he told her why, but said he wanted to be in the woods, out of the way of the people; asked the widow if she thought Field was murdered or had run away; that he asked the widow to let him out at the back door of her house.

On the part of the defense the following new testimony, not introduced on former trials, was given :

A *Mrs. Dunlap* testified that she saw the dentist, Wilcox, on the Monday evening following Field's disappearance; she asked him if he knew that Field had disappeared, and he said no, he had not heard of it; but perhaps he had been drowned or tipped over on Lake Michigan. (The cross-examination of the dentist had already shown that Vanderpool had told him of Field's disappearance early Monday morning.)

On the part of the defense the question was then raised as to their right to read the testimony of several witnesses, given on former trials, but who were now out of the State. After a full argument of the question, the court admitted the testimony on the behalf of the defendant. Testimony was also introduced as to the physical incapacity of Vanderpool, by reason of a hernia, to dispose of the body of Field as claimed.

The defense then offered another branch of the new testimony upon this trial, putting upon the stand one *Captain William R. Smith*, who testified that he was captain of the schooner *Crawford*, plying between Buffalo and Chicago; that he sailed from Chicago

September 14, 1869, and passed twelve miles off the mouth of the Manistee river; that on the fifteenth he saw a small white boat with a man in it, about a mile to starboard; that, thinking the man was in distress, as the sea was rough, he altered the schooner's course for him; that when within thirty feet of the small boat, the witness hailed him and asked him if he wanted to come aboard of the schooner, but he made no reply. He was evidently in distress, was sitting on the bottom of the boat, with a small piece of board in his hand; the boat was without sails or oars; that he threw him a line, which the man caught, and told him to move to the bow of the boat or he would capsize her, but he paid no attention to the request; the schooner's hands hauled him alongside and took him on board; on taking him in, the small boat that he had been in was capsized; and witness told the hands of the schooner to save it, and the mysterious man then, for the first time, spoke, saying, "Let the boat go to hell; I have had enough of it." The strange man was taken into the cabin of the schooner, and changed his clothes. When taken on board he had on a coat and pants, but was barefoot; he said he had been out two days, came from Big Sauble point; and he ate ravenously. The witness offered to land him at Mackinaw, the man refused, and said he did not want to go back to the State of Michigan; said he got blowed off from the shore. The witness asked him if he had any money, he said no. Witness, up to this time, had not heard of the disappearance of Field; witness carried the strange boatman through the Straits of Mackinaw around to the river St. Clair; that a tug which towed the schooner stopped to wood on the Canada side, and the strange boatman got on to the tug and went off down the St. Clair river; the tug was the *George N. Brady*. The strange man said his name was Jacob.

The cross-examination of witness failed to shake him in the least.

The next witness was *Mrs. Margaret Anderson*, who testified that she was cook on the schooner *Crawford* on the trip from Chicago on the fifth of September, 1869. She corroborated the testimony of Captain Smith as to the picking up of the strange boatman, and testified that he had on two coats; that the next day after he came on the *Crawford* he came into the cook's galley to examine something secretly which he had in his left breast pocket; that it was a large roll of greenbacks; when he saw her looking he put it back instantly into his pocket; that she noticed where he slept nights, and that always on awakening he would examine this pocket; that she had not heard at this time of the disappearance of Field; that the strange man refused to talk while on the schooner.

Charles B. Howard testified that he was engineer of the tug *George N. Brady;* that the strange boatman came on to the tug from the schooner *Crawford* at the Canadian wood yard in the St. Clair river, as testified to by Captain Smith; that the strange man had a bundle which he kept under his head when sleeping; that he helped the men to wood the tug, and that, though very hot, he kept his coat on and buttoned to the throat; that as soon as the tug touched the dock in Detroit, and before her lines were out, the strange man jumped off and passed up the wharf.

Captain Anthony Gurney testified that he was a sailor and captain now in the Government employ, building lighthouses; that in 1869 he was captain of the tug *George N. Brady*, and towed the schooner *Crawford* from Lake St. Clair to Lake Erie late in September, 1869; that he took this strange boatman at the request of the captain of the *Crawford*, and carried him up to Detroit on his tug; that he helped the men wood the tug; kept his coat buttoned to the chin, though the day was warm; slept on deck with a bundle under his head; spoke to no one; and jumped from the tug at Detroit before the lines were made fast.

Captain Andrew H. Mills testified that he lived in Detroit, and owned three vessels; saw the tug *George N. Brady* land at the time spoken of in Detroit; saw the strange boatman jump from her; that he asked witness how he could get to Canada, and witness pointed out the ferry boat just landing; that he saw the strange boatman go aboard of her, and that was the last he saw of him.

The defense also offered, in connection with this testimony, expert testimony to show that the prevailing winds on Lake Michigan from September fifth to fifteenth was from south to southwest; and also, by diagrams and expert testimony, that a body dropped twelve miles off Manistee river within two or three days of the fifth would be carried by the current to the beach where Field's body was found.

The defense then called another witness, the *Rev. J. B. Fisk*, who testified that a week after Field's disappearance, while searching with others for the body of Field, in a dense wood near Canfield's mill, near Manistee, upon the bank of the river, where a large log ran into the water, he saw evidence of a disturbance of the ground on the edge of the river, as though a small boat had been run up on the ground; twigs were broken from the trees, and there seemed to have been a struggle.

Witness was then asked by the defense what he thought would produce the appearance described. After objection and argument, the court admitted the testimony. And he said, "The prow of a boat;" that looking around he found a wrapper that had been about a package of money, with "One hundred dollars" marked on it, and a red stain, like blood, upon it; the paper was produced in court. The witness further testified that while searching he saw the dentist, Wilcox, in this vicinity.

On the cross-examination of one of the prosecution's witnesses, one, too, who had testified on both the previous trials, John Blanchard by name, and from whom no such testimony had been previously elicited, the defense proved that fishermen were in the habit of catching whitefish and trout at the mouth of the river; that they dressed these fish in their boats before they carried them up the bank into the city; that when dressed at the landing they were put in baskets, carried up into the main street, *and the blood usually dripped from the baskets!*

The witness testified that on Thursday afternoon, the first of September, he and his partner thus carried a load of freshly dressed fish to the bank dock, carried them up the bank stairs by the side of the bank building, *and that witness then saw blood drip from the basket on the stairs!*

The defense also showed by expert testimony that it was almost impossible to detect, in a microscopic examination of the blood corpuscles, human from fish blood.

Argument of Mr. Cheever for the Prisoner.

The exordium of his address was an eloquent appeal to the jury. Of the body of his remarks, the following is an abstract:

I congratulate you here that neither sickness nor death has come during this trial to diminish our number. Like passengers on an ocean voyage, we came together as strangers, but this four weeks has made us friends, and when you shall have discharged your solemn duty and rendered your verdict, I trust that we may look back upon these weeks with pleasure. * * *

You have nothing to do with the young man who was stricken down in the prime of life. You have nothing to do with the bereaved mother who believes her son to be murdered, who supposes him forever lost to her on this earth; nor with the wife who may be worse than widowed by your verdict. It is your business to try the matter before you as if the prisoner was the veriest ruf-

fian who walks the earth, instead of a young, honest and honored citizen of a young and prosperous city. But it is also your duty to remember that it is for the interests of the great people that your decision should be strictly just to him who sits here charged with crime, and that it is better that "ninety and and nine guilty ones should go unpunished rather than that one innocent man should suffer." * * *

Two years ago this man and his young wife, this pair, whose only wealth was love, had their home darkened by the shadow of a black and terrible suspicion—the master of the house was charged with shedding a brother's blood. After one day of surmise he was seized and hurried into prison, a hasty trial followed, and he was condemned to a life-long incarceration. * * *

The spectacle presented to us here to-day is sublime, for in this great state of Michigan, in the little court-house in this little city of Hastings, is being silently worked out the problem that has been such a mystery for two long years. The outside world goes on with its hum and business, little caring whether George Vanderpool goes forth a free man, or not. We live from day to day and follow our daily avocations, and hardly know whether there is a law on the statute books, or not. * * *

The two young men, Vanderpool and Field, were almost boys in business when they began. Field was an open, candid youth—a man who bore his heart upon his sleeve; his partner a little older, indeed, but fully as untrained in the management of affairs. These two entered into a copartnership, by the terms of which Field could not, if he would, have dissolved the relations of the firm. * *

Do you remember how the learned counsel charged this prisoner yesterday with riotous living in Saratoga? He drove there quietly in a modest little buggy, which he had borrowed from his mother-in-law, where he was visiting with his wife. Thurber found this man bringing a pitcher of milk for his morning meal. Why was it that this millionaire—this rich banker of Manistee, had not a train of servants to send for his milk, and to do his scrubbing? And he went hastily, before his breakfast, to begin the washing out of the building, did he? Gentlemen, how easy is the explanation. When Thurber came to the bank in the morning, Vanderpool told him at once: "Field has been here and has taken his papers." When Vanderpool heard at his gate that morning, from Thurber that Field had gone away, what did he do? Why, he did just what any prudent man would have done; he set down his milk and started for the bank, for what? To begin scrubbing, they tell you. He went back, as any prudent man would, and examined his safe

to see what he had taken, and when Thurber came in, he said, "Field has been here, for his papers are gone." * * *

THE CORPUS DELICTI NOT PROVEN.

They must prove, first, the *corpus delicti*—the fact of the commission of the crime—and second, the guilt of the respondent. But, in the first place, they have not even proved the *corpus delicti*. To have done that, the identity of the dead body must have been shown, either naturally or artificially, as the law says; in other words, by an absolute recognition of the features, or by attendant circumstances of clothing or other peculiarity. But circumstantial identification is most uncertain; instance after instance has been known where, after the most positive artificial recognition and conviction resulting therefrom, it has been discovered that the whole thing was a mistake, and that the punishment was misplaced and unjust. Even recognition by features is not always decisive. In this case not one witness has identified the body washed up on the Frankfort beach by the features; only one has sworn to knowing the corpse by its appearance, and he knew it by the shape of the back of its neck. Have any of you ever attended a masked ball? Have you ever tried to detect even your intimate friends by the shape of the forehead, or the lower part of the face, when the rest of the features were concealed? You know how difficult it is to do this; you know how much more difficult it is to recognize them by their forms. How absurd, then, it is to try to declare who a person is by the "shape of the back of the neck!"

Now, where are the artificial proofs that this body was the body of Herbert Field? That of paramount importance, perhaps, and that upon which the issue of the case might possibly depend, is found in the testimony of Crispin and Slyfield. The first could do no more than swear that the same articles which he found on the body at Frankfort he saw again at Manistee. But one swore to seeing *two* socks upon the feet of the body; the other remembered but *one*. One thought there was a cravat upon the neck; the other thought not. When Crispin returned from his search for the coroner, he found the pockets of the pantaloons upon the body turned inside out; they were not so when he left it—at least he had not noticed that they were. Here is the torn envelope, with the blurred writing "Herbert F" upon it, and this is one of the slight circumstances upon which the People base their identification. You remember how witnesses differed about the human figure on the arm; how Shurley said that there was a wreath in its hands, and how Slyfield declared that it was no wreath, but a row of stars

above its head. Dunning said the figure on the living arm of Field was adorned with a wreath of evergreens, Hall knew his friend by the ring he wore only, and Dr. Shurley admits that he would not have known who it was if he had not seen the figure on the arm. Now, as to Dr. Hopkins, he found his own work in the filling of the teeth in the dead man's head, and in the separation of teeth by filing. But, gentlemen, Dr. Hopkins is not the only man who ever filed a patient's teeth, and other men than Field have had teeth filed.

Is not all this weak evidence by which to prove the identification of Field?

Then, as to the clothing, nothing can be certainly shown by that. The pantaloons, gold piece, shirt, shirt-studs and ring could have been left with the body, if man's devilish ingenuity had made it a method of concealment of crime. But this is all, and the frail testimony of the dentist fills up the rest.

And now, note this one thing: there has not been one single syllable to tell the story of the sex of the corpse thrown up upon the sands. There is not one word to show that it was the body of a man. If it was Field's corpse, I yield to no one in my sympathy with his sorrowing friends. But my duty compels me to remind you that there is not only not enough known to convince you that it was really his, but there is not enough to determine whether it was that of a man or of a woman.

However, admitting for the sake of the argument, that the body was that of Herbert Field, it next becomes necessary for the People to show that murder had been done, and for this they have to resort wholly to circumstantial evidence. They have not an atom of direct proof upon the subject. Let me call your attention to an instance which Lord Coke gives of circumstantial evidence of the strongest kind. A man rushes out of a building with a drawn sword in his hand, dripping with blood; within the house is found a man pierced through, and in the agonies of death. The man with the sword is seized for murder and condemned, though he protests his innocence, and he *was* innocent. Mark the explanation. He had entered the house and found a suicide who had but just run himself through; he had seized the sword and drawn it out of the body, and rushed forth to call for help. The truth, when it was known, was simple and natural.

Mr. Cheever here continued to relate numerous actual and interesting instances of mistaken conviction upon circumstantial evidence, told in the most effective and vividly descriptive manner,

touching upon the case of Miss Rosenzweig, and that of Weatherwax, the latter of which is one of the most remarkable illustrations of the point in all criminal history. The speaker also brought up the Colvin matter, an old and almost equally remarkable case which occurred in Vermont over fifty years ago; and then proceeded:

HOW IS THE CHARGE BROUGHT HOME TO THE PRISONER?

Now, what circumstances have the prosecution shown or attempted to show upon which they base this charge. They introduce witnesses who swear that they saw him at an unusually early hour and one witness—Dr. Wilcox—swears that he saw blood on the stairs on that Monday morning. These persons who were up and saw him were about their lawful business, they say, but may not George Vanderpool have been about his lawful business as well as they? If Field had not been missing, would these circumstances have been considered suspicious? That is the test. *Gentlemen, do not consider circumstances as suspicious which would not be considered so if not viewed with a crime in the background.*

* * * * * * *

NO BLOOD IN "SUSPICIOUS QUANTITIES" IS FOUND.

My third point is, that there was no suspicious quantity of blood found in that bank on Wednesday; and, first, there was no suspicious quantity of blood on the floor, for all that was on the floor on Wednesday must assuredly have been on the floor on Monday. But of all persons in the bank on that day and on the next, not one noticed any blood, nor did they notice any blood in the water that was swept out. They sent a piece of board from the floor to Dr. Duffield for examination, and they testify that there was as much blood on that piece as on any other, and Dr. Duffield said that he found no blood under the ink, yet several of these witnesses testified that blood cropped out from under the ink. They expect to collect all this testimony that has been coming in for so many weeks, and hurl it at you in a mass, and convince you in this way, for it will not stand analysis. They say there was blood on the wall and desk. Let us examine these spots together, for they are so small that it is ridiculous to separate them. Conover says, there was blood on the east wall, mark that—but if he had been struck while sitting at his desk, we would have expected to find the spatters of blood on the west wall. Besides, Dr. Shurley testified that the blood would continue to flow in jets for three minutes, but if so, where did all this blood go? It would have saturated

the carpet for a much larger space than was cut out, and would have run through the floor and down into the basement, but we find none there, and only the little piece hanging down like a pea from the floor. Three minutes is a long time for blood to flow, and spurt and jet; it would have saturated everything around there. I tell you Herbert Field was never murdered in that bank. He may have been foully murdered, and that, too, by George Vanderpool, but never in that bank. To explain the blood on the wall, and on the legs of the desk is very easy, when we consider that they used a great deal of red ink, and how common a thing it is when we dip the pen into the ink bottle to throw off a drop before writing. If that body was carried out of the front door and down those stairs, why was not blood found in front of the bank, as well as down the stairs? I am glad, for Dr. Wilcox's reputation, that the witness Blanchard gave the explanation of that blood on the stairs that he did, but it is a strong commentary on human weakness, that, in the two trials before this, in which there was great legal skill and accumen, this fact which explains all this blood was not brought out.

In regard to the blood on the stairs leading down to the river, the witness Blanchard gives us an explanation for that, by saying that he carried a basket of fish up those stairs on Tuesday and saw blood and serum drip from his bucket, and you remember that no blood was seen there till Wednesday. But the counsel on the other side were not satisfied with this, and asked the witness if he had ever carried up any fish there before, when he said that he had carrried up some on the previous Saturday. * * * * *

THE FOUR "WITNESS TREES" WHICH SHOULD POINT TO THE "CORNER POST" OF GUILT, DO NOT AGREE.

* * * * If you go into the boundless forest and seek to find the line that the government has surveyed between two sections of land, you seek to find the "corner post," knowing that *it* is the main *fact* upon which you rely. But this "corner post," this "main fact," you can only find by following the "witness trees," and directions, courses and distance they bear from the corner post. These "witness trees" all point to the "corner post," the *main fact.* But if any one of them do not so point, you are in doubt—there is something wrong; and the farther you go in the search, following their guidance, the more uncertain you are of the true line. Vanderpool, Secor, Dr. Wilcox, and the "strange boatman," are the four witness trees, each bearing more or less of the *blazed* evidences of guilt. But do they each and all point in the same

direction? Charles Secor found a human hair upon that bloody newspaper, red spots upon the carpet so small he had to pin them for future reference. No other witness saw these evidences of guilt. He was early at that bank, as well as Vanderpool, that Monday morning, with his horse and buggy. It was five o'clock. Where had he been? At this time no suspicion was aroused. It was not even known that Field had disappeared. Secor lived but two blocks from the bank; why was he there with his horse and buggy at that hour? With what microscopic vision did he find that single human hair, those minute blood spots? That hair, those spots, that early ride, that mission to the bank, are all "marks" of guilt, but they do not point toward the prisoner.

Dr. Wilcox roomed over the bank. *He* was also up very early that Monday morning, and saw Vanderpool at the bank, as did Secor. He went down the stairs by the side of the bank, that morning, and avoided the blood spots by walking on the other side. He went toward the river, perhaps, like Lady Macbeth, looking at his hand, and crying as he went, "Out, damned spot! Out, I say!" He slept in his office that Sunday night. On the Wednesday following he was under the bank digging for blood (?); but when others came to dig, hunting for the signs of that murder, he hurries to a widow's house, near by, and asks the privilege of sawing her wood; said he wished to be out of the way of those people; asked her if she supposed Field was murdered or had run away; and then, when conscience made him coward through and through, begged piteously to be let out by her back door, and so escaped to the woods. His confusion, his early rising that Monday morning, his fear of those innocent blood spots on the stairs, his terror at the presence of his fellow beings under the bank digging, sent him, like Cain, a vagabond upon the face of the earth. All these things are "marks" of guilt, but they do not point toward the prisoner.

The "mysterious boatman," who was he? A man was seen that Sunday night, crouching in a "white boat," as he paddled down that little river toward the lake? He avoided other boats, he was seen of witnesses; but, like grim Charon, silently he paddled on. Something seemed to be following the boat as though attached to it in the water. Was he ferrying some dead body down the river of death? Do you know? Ten days later, twelve miles off the mouth of that river, another strange boatman (or the same), was seen without rudder, oars or sail—famished, gaunt and hungry—in another "white boat" (or the same). A schooner seeks to aid him. The voice of its captain calls to him in kindness. He makes

no reply. He is taken aboard, he intentionally capsizes the white boat, and when the schooner hands were bidden to save it, he speaks for the first time. "let the boat go to h—l, I have had *enough* of it." He eats ravenously, refuses to be landed in the state of Michigan; denies the possession of money, but is seen counting a large roll of bills stealthily. He sleeps, eats, lives alone, like some wild beast, avoiding human beings. He lands at Detroit, and instantly departs for Canada, first inquiring his way to that land of refuge. Who was he? I do not know! You do not know! But there is an unbroken line of guilt (or mystery) running from that little river at Manistee out into the lake, around the great state of Michigan, through the Straits of Mackinaw, down through lakes Huron, St. Clair, and the Detroit, and so circling this great peninsula, it is lost in Canada. That is a line of guilt, strange as an old tale, mysterious as any mythology, but certain, nevertheless—but it does not touch the prisoner.

For the fourth witness tree, you have the prisoner, Vanderpool. There are evidences of guilt which point to him. There are strange, almost unaccountable, circumstances which seem to envelop him. But, just because circumstances equally strange and mysterious surround these other three persons, you cannot say which, if either, is guilty. If either of *them* was on trial, you would have the same difficulty.

Where, then, is the "corner post" of guilt? These four witness trees point in four different directions. You cannot focus their indications upon this prisoner.

* * * * * * *

He then gave a scathing description of Conover, Secor, Ingram, Bullis and others who had been foremost in prosecuting and persecuting this prisoner, after which he concluded as follows:

And, now, gentlemen, I leave this case, so far as I am concerned, with you; my responsibility has been great, yours will be greater. I cannot lift the curtain that for two long years has hidden this mystery; perhaps it will never be lifted, until that day when all things are made plain, and the puzzles of time are all solved. Whether Herbert Field is alive or dead, whether George Vanderpool killed him or not, I do not know, but four weeks of patient investigation have failed to show either a death or murder. It is not for me to ask of you mercy, instead of justice; for here as I believe, justice will be a verdict which shall give back a husband to his wife, now for two years more than widowed. No, we do not ask you to "strain the quality of mercy;" but while I hold up

to you the law and evidence in this case, and ask by the very "letter of the bond" an acquittal, I also point you to this wife and ask you not to bring upon her young life the shadow of an uncalculated eclipse. I tell you there was mystery, not death, in that little bank on that September day. Two men entered it, but no human eye that we can find saw either leave it. Here is one of them, but where the other is, or how he left it, I know not. Justice demands an acquittal at your hands. What I have said is of little moment, but what you do will last forever.

Hon. Thomas B. Church, closing for the People, said:

Gentlemen of the jury—The prisoner at the bar is charged with a crime which is not only contrary to the laws of man, but to the great canon of the Almighty, "Thou shalt not kill." Counsel may inveigh against witnesses as much as they choose; theorize, mystify, and speculate as they will, to the utmost of their ability, but they cannot get away from the cardinal fact that stands out as clear as day—that Herbert Field is dead, and that he died by violence. We live in a singular state of things; if there is anything about a crime that is unusually horrible, strange or extraordinary, it seems the public taste is vitiated, and the criminal comes to the bar with all the appliances for excusing or covering up the heinousness of his offense, and lionizing the offender. Have we not somthing of this here? Why should the case of this criminal be examined with more tenderness, with less candor or scrutiny than that of any other? * * * *

In the early stages of the cause, we talked of the disappearance of Herbert Field; we occasionally ventured upon the phrase, "alleged murder;" that is all over now. The truth is no longer to be disguised or obscured. Field was murdered; he was thrust out of his young and blooming life, and was not slain by casualty; he was murdered—murdered—murdered! And where? And by whom? Sometimes the place and the criminal expose each other. Let us first consider the question, Who killed him? We will take all the circumstances that have since come to light, and will now, *a posteriori*, as the logicians say, discover the murderer. We are no longer groping; we have that in our hands which will shed its light on the mystery, and will, by inevitable inference, reveal the criminal. * * * *

Then, was there a forgery committed after his death—and for what purpose—and by whom? There was a series of entries on the books amounting, as I read them, to $3,360. That, as I understand it, is the way in which he left these books when he went out

into the darkness of death. Are they correct? There is one thing to show, and that is the little book which Hall testified was kept by his friend Field. It has been admitted as evidence, and it contains contemporaneous entries of drawing and deposit. And the whole foots up just $3,360.22, with which he has credited himself on that little book. Now, part is taken out in drafts, and part in currency. When Dunham comes to examine, he finds $2,295 in an envelope, and then, from across the lake comes the word that $1,060.22 lies deposited in Chicago, to his account. This makes $3,355, and leaves a difference of $5, which might easily be the pocket money that Mr. Field had taken from his own funds. * * *

This gold was in Field's pocket late on Saturday night. It was presumably in his pocket on Sunday morning when he left his aunt's and the next that was seen of it was when Conover saw it scattered about the bottom of the safe on Monday. Gold is always kept in bags or boxes; this was lying loose. Where did it come from? Rifled from the pocket of Herbert Field as he lay lifeless in that bank on Sunday, and afterward found hidden away in the house of the defendant. Gentlemen, I have asked the Judge to charge you that the possession of the private property of a person murdered is criminative evidence of the highest degree. If he who has it cannot satisfactorily explain how he got it, the law presumes that it was taken in the perpetration and execution of crime. * *

Then, it is in this position that we find the respondent—compelled to do some desperate deed to save his position in society and his place as a business man. To prove his innocence there is no way but to show an *alibi* for Field. * * * *

Now, gentlemen, eight Bostonians of high character swore positively to having seen Dr. Parkman after the hour when he went into the medical college from which he never came out alive—and all these eight knew Dr. Parkman, and one of them swore to having bowed to him and to receiving a bow in return. Why, who should have seen Field that day, if he was alive? His most intimate friends—not simply those who barely knew him—yet not one who was well acquainted with him ever saw him after that fatal noon. * * * *

The defense have introduced certain new evidence, and, having done so, it is as much at our service as at theirs. If it becomes necessary for us to show that Vanderpool had an accomplice to help him remove the body, we are entitled to use the evidence, which is new to us, and which supplements our position. But it is not necessary to use it. I have made some calculation on the time necessary for a trip to the piers and back. The defense have

claimed that fifty-eight minutes were needed, if a body weighted with iron was dragged at the end of the boat. I will let them have their estimate, but I will tell you that it is neither necessary nor possible to make the voyage on which Coquillard estimated. Stormy as the surface of the water was that Sunday night, neither Vanderpool nor "the man in the boat" could have gone beyond the Blanchard property on the voyage toward the mouth of the river. And if either had dropped his dreadful burden there, it would, by the inevitable action of the water, have just as certainly been cast outside the piers as if it had been taken to the very outlet. * * * *

Here Mr. Church told a boat-story which he had picked up in a law-book, to illustrate the unreliability of such evidence as that which was brought up for the first time on this trial.

The defense have laid great stress upon the testimony of John Blanchard as to the landing at the bank platform with fish. No matter how much fish was ever carried up those stairs, the blood that was found there was indisputably mammalian blood, and was so recognized by Dr. Duffield; so was the blood on the floor, and that is not disputed; so was the blood on the Manistee *Times*, lying in the desk of the bank. * * * *

The little dog was at Vanderpool's house in the afternoon, and was running uneasily about. But where was he at noon? At Kalamazoo, Piper testified that he had not particularly noticed any dog with Vanderpool when Vanderpool came back into his house for his bath. Here he said he thought the dog was with him. But Nungessner, treading close on the heels of Ramsdell, heard a dog howling in the bank. What does this mean? When a dog is pinched or suddenly hurt he yelps, he does not howl. That howl meant that a more fearful, terrifying sight was before his eyes than he had ever yet looked upon. And Vanderpool took him away with him, that he might not attract the attention of passers-by by his moaning. And in the evening, remembering the silent face of his dead master, he wandered restlessly about—not soothed by the presence of his new mistress even—and mutely appealed to the murderer for the assistance which could never be given to the victim. * * * *

Gentlemen, Mr. Vanderpool has committed this murder. It is a terrible conclusion, but one which we cannot avoid. If we must draw this inference, it is as a duty we owe to the people. It is against the presumption of the law, which regards him as innocent until he is proven guilty; it is against his former character, poorly

proven as it is; it is against his supposed friendly relations with his partner Field. But it is not the less a possibility, for God only knows what lies under the exteriors of men, respectable and fair-spoken as they may seem. Only one class of men in this country—the priests of the Catholic Church—are permitted to hear the inmost secrets of men's minds, and their lips are sealed. We have had testimony upon Vanderpool's reputation; no confessor has come forward to tell us of his character. He did hold Field in double trust—his friend, his partner—and those facts should have "pled like angels, trumpet-tongued, against the deep damnation of his taking off." But he was not faithful to his charge; under his smooth face he carried hatred and a bloody purpose; to every appearance friendly and upright, he was but a "whited sepulchre, full of dead men's bones and all uncleanliness."

* * * * * *

Gentlemen, I leave this case in your hands, in the hands of men who will not that the acquisitions of industry and economy be torn from them by robbery, nor that the term of their natural lives be shortened by murder; but who will that the least wrong done in any community to the humblest member of that community is a wrong done to the State. However much of pleasantry may have seemed to you to have entered into the little verbal encounters between the counsel in the case, I assure you that this noble member of the profession who sits beside me has never once lost sight of his duty to his client, and that I have not once forgotten what I owe to the People whom I represent. My own associations with the cause are somewhat remarkable. At the first trial I was crushed by the loss of a son, and I told the jury that while my own affliction led me to pity the sorrowing family whose home had been so suddenly and terribly overshadowed by this great crime, that it led me also to hope for the safe deliverence of this young man from the fearful accusation which weighed upon him. I know the consequences of conviction; how it cuts down to the earth, at once and forever, the bright hopes of these young lives, and dooms the prisoner to a living death. But the actual and possible consequences of the crime are dark and dreadful, however they are viewed. Herbert Field murdered, his aged mother is driven almost to the confines of insanity; the respondent convicted, the young life of his wife is crushed and darkened forever. * * * *

Gentlemen, take the case to your jury room. May the God of mercy, truth and justice guide your deliberations—the God of mercy, who will incline your hearts to pity this wretched man who sits before you, charged with the greatest of crimes—the God of

truth, who will point out to your understandings the hidden things of this mystery, and make them clear to your vision—the God of justice, who will bring you to a righteous decision.

The jury were out six hours. The first ballot was eleven not guilty, one guilty of murder in the second degree. At this point they came in for further instructions, and were charged by the court, at the request of the prisoner's counsel, that they must either convict of murder in the first degree or acquit.

The scene in the court room during this second instruction to the jury was tragic. Vanderpool's wife sat with hands clenched and blanched cheeks, and when the jury retired the second time, she broke down into a fit of terrified sobbing at what she believed the awful suggestiveness of what had just taken place, although her counsel assured her and indicated exactly what transpired shortly afterwards.

Fifteen minutes later the jury announced their agreement. The scene in the court room was impressive. The clerk rose and asked the jury if they had agreed upon their verdict; the foreman answered, "Yes!" The clerk, in his excitement, forgot to properly interrogate them, but asked, "For whom do you find?" The reply of the foreman was scarcely audible, from suppressed emotion, and it was supposed by most who heard to be "Guilty." He immediately arose, however, and said plainly, "Not guilty!" and three or four other jurors half rose, repeated his words, and fell back into their seats. Mrs. Vanderpool, with a shriek, fell forward into her husband's arms.

"Can't you take the verdict in form?" asked Mr. Hughes, impatiently, of the clerk. "Ask whether the verdict is guilty or not guilty."

This was done at last, and the answer came back, "Not guilty."

And so say you all?" said the clerk.

"Not guilty!" reiterated every juror.

The scene which followed is almost indescribable; a tornado of applause followed from the densely-packed court room, which the court could not suppress. The building shook; the prisoner turned his face to heaven, closed his eyes, and lifted his hands, as though in thanksgiving. One great, brawny juror, with a piratical moustache, whimpered like a child. Another, a sturdy blacksmith, usually ferocious in appearance, wept. Ladies in the court room crowded into the bar to congratulate the prisoner and his wife, who in turn gave to their counsel the warmest assurances of their gratitude.

And so the great trial of Vanderpool was over.

As an incident interesting in connection with this trial, the following editorial clipped from the columns of the Grand Rapids *Daily Democrat*, published the day after the introduction of the testimony concerning the mysterious boatman, may prove interesting:

"WHO MURDERED HERBERT FIELD?

"We don't believe in spiritualism, free love, or witchcraft, yet a circumstance in regard to the murder of Herbert Field, at Manistee, two years ago, may be worth relating, since the introduction of new testimony by the defense in the Vanderpool trial, at Hastings, bears on the same subject.

"A few days before the trial of Vanderpool at Manistee, on the charge of murder, the writer was called to visit a gentleman in this city in regard to the purchase of a piece of property, and while there witnessed a 'spiritual manifestation,' as it is called, which convinced several who were present that Vanderpool was innocent of the charge of murder.

"When we entered the house we were somewhat surprised to meet a circle of believers in spiritualism, while one of the number, a lady, was just going into a 'trance.' Being invited to a seat, we accepted, with the purpose of seeing the 'whole entertainment.' The lady medium appeared to have no control over herself, her limbs twitching and jerking, her eyes being closed, while the muscles of her face were made to perform violent contortions, and presented an appearance disagreeable to look upon.

"Gradually she became more calm, and at length very quiet. A number of questions were asked, which the woman answered, in a deep, masculine voice, evidently to the satisfaction of all present.

"The Manistee murder at that time being the source of conversation in high and low circles, one of the number asked the medium, 'Did Vanderpool kill Field?' and the reply was, very emphatically, 'No.' Further inquiries on the same subject were made and answered promptly, and in reply to the question, 'Can you describe the person who killed Field?' She answered, 'Yes,' and then drew a picture of a man, of which the person picked up in a 'mysterious boat' off Manistee by the captain of the schooner *Crawford*, and described in the trial at Hastings, was an exact counterpart. The medium further stated that the 'myterious man had an accomplice' in the person of a female, who was minutely described, and who received a portion of Field's money. Other particulars of

the murder were touched upon, but not being 'in the faith,' we took no pains to remember them, and probably should not the event above but for the fact of the new evidence brought out at Hastings. We only desire to repeat that we have no faith in spiritualism, and publish the above circumstance for what it is worth, only adding that what is stated is true in every particular, and can be corroborated by persons who were present."

McFARLAND-RICHARDSON CASE.

Tried at New York, May, 1870.

STATEMENT.

1. Albert D. Richardson was a journalist, a staff reporter, and late war correspondent of the New York *Tribune;* a man known throughout the nation as a pleasing writer of considerable promise.

2. Daniel McFarland was a graduate of Dartmouth college: a professor of chemistry, logic and belles-lettres; an elocutionist, and member of the New York bar, with some political influence, but slender law practice. He had speculated and failed, and was not possessed of much property. At the time of the homicide he was about fifty years of age. He had married a young wife, rather giddy, though quite attractive, who bore him two children. Two years prior to the tragedy, Mrs. McFarland had applied, in Indiana, for a divorce; but there was no record produced on this trial of the granting of her petition. Just before the death of Richardson, the Rev. Henry Ward Beecher and Dr. Frothingham performed a marriage ceremony between Abbie Sage McFarland and Albert D. Richardson, at the Astor House, which was not a little sensational, Mr. Beecher thanking the "Divine Father for what these two had been to each other." Mr. McFarland having no notice, or service of notice, claimed the alleged divorce to be wholly void.

The theory of the defense was insanity, caused by the loss of Mr. McFarland's wife and child through the wiles of Richardson. The People sought to convict of murder in the first degree. The trial was before Recorder Hackett. District attorney Gavin and Judge Davis appeared for the state; Hon. John Graham and Elbridge T. Gerry for the defense. Mr. Graham closed for the

defense, and, added to his general talent, was the ripe experience of four similar trials, so that his brief and argument on the law of insanity is one of the fullest and most complete ever written or delivered on the subject. He had no personal pride of opinion to advance; wherever rare wisdom was to be had, he procured and read it; the Bible, as well as words of eminent advocates like Seward, Stanton, Brady, Hale and judges of high renown, were used with a power and skill, seldom surpassed since the trial of Hastings. It has many apt quotations of distinguished men, made effective by one orator. In this respect, the argument of Mr. Graham is the climax of a thirty days' trial. His speech was animated action. His art is utter self-oblivion and a rigid adherence to the strong points of law and evidence. He assumed nothing until proven, and proved that thoroughness with strong personal belief in his case was effective. His frequent use of pertinent scripture quotations, delivered with a sacredness always appropriate, gave weight to his reasoning. His memory, force and industry, all aid in his success. His remarks are condensed from one hundred and twenty-eight pages to a short story of the case, with a terse argument, and a happy combination of other briefs makes it fourfold stronger.

ARGUMENT OF MR. JOHN GRAHAM.

MAY IT PLEASE THE COURT: *Gentlemen of the jury,* How consoling must be this day to this afflicted, sorrowing and heart-broken man! He is at last where he has no cause to dread to be, before a jury of his peers, the highest social privilege guaranteed to him by the laws of his country. Within his bosom, for many a dreary hour, he has carried a weight of anguish likened unto which the nether mill-stone, figuratively speaking, may be almost said to be as light as air. Death, stripped of the obloquy and terrors here sought to be attached to it, might be to him a harbor of repose. Long enough has he endured the peltings of the merciless storm! Who does not now trust that he may find an asylum in your justice? Temper it with mercy, as you yourselves expect forgiveness.

To you, to you, my fellow men, through me, his humble and undeserving advocate, he turns as the arbiters of his worldly hopes and his earthly destiny. In him are united the wrongs of a dishonored husband, an injured, an outraged father. His story can be briefly told. "He has loved not wisely, but too well." You have heard some of the particulars of his sad career. Have they not gone to the very depths of your souls? Have you not, each one of you, during the developments of this unnatural investiga-

tion, asked yourselves, over and over again, the question: Could I have done less than he did, and might I not have done more? Who can tell the capacity of the human mind to withstand or resist those pressures against which it may have to contend? Who can make over the work of Omnipotence? Who can alter or reverse its fiat? If we turn our eyes to those trackless, unmeasured realms of space which abound with the monuments of the vastness, power and wisdom of the Great Author of all, how are we dizzied by the grandeur of the contemplation, and shrivelled by a sense of our own littleness? Which of us could be vain or irreligious enough to question or seek to interfere with the laws which regulate the movements of those countless systems, compared with which our own sphere is as a speck, and with which it has not any ascertainable connection? Who can check the light, or restrain the heat, which issues from the sun? Who can return to the queen of night her silvery brightness, or despoil her of any of her appropriate offices? Who can appoint the time for the blowing of the wind, the appearance of the lightning, or the advent of the rain? This is not within the scope of human power. These are not among human prerogatives.

It is to this category we assign the human mind. It is the breath of the Deity. It is a fire of his kindling. It is the immortal soul bound on its way to eternity. It contains the elements communicated to it from that source, and it is as impracticable for us to extinguish it altogether as to create it anew or to endow it with a different character. There is a point up to which its operations may be said to be vicious or criminal. Beyond that point its action is suspended for all secular purposes, leaving its possessor an involuntary agent in the execution and infliction of Divine vengeance.

What is the allegation of this prosecution? Not, may it please the court, and you, gentlemen of the jury, that the individual who has passed to his grave met an unmerited doom; not that, if he sullied the marital honor of his neighbor, he did not disentitle himself to live: but simply this—that, however just and righteous his reward, he received it at the hands of an unauthorized instrumentality. That depends upon the mental condition of the slayer at the time of the commission of his act. It is this consideration which meets you at the threshold, and is the last to leave you at the close of this solemn proceeding.

Here I may be permitted to return the thanks of my learned brother and myself to the court, for the amenity we have experienced at its hands from the opening to the close of this investiga-

tion. Your honor's responsibility has been great. Your trust has been most sacred. Many important questions have arisen, to be decided upon the spur of the moment. They have had to be summarily disposed of, in order to enable the wheels of this trial to keep rolling on. However much we may have differed from you during this trial, so far as my associate and myself are concerned, we desire to make this public acknowledgment to you, and to express our conviction that every decision you have rendered has been prompted by humanity of motive, by purity of intention, and by an unquestionable spirit of impartiality. To you, gentlemen of the jury, our obligations are overwhelming. We have taxed your patience and time beyond all precedent. We know not how to thank you. Your sacrifices have been great. Remember the great moral, as well as social duty of this occasion. In later life it may be a gratification to you to refer to the incidents of this trial. God grant that you may be spared to see the good results, which may issue from your action on this solemn occasion. It may be that the satisfaction—as you turn back upon this occasion—which you will derive from its recollection, will prove to you more or less of a compensation for the losses you have been compelled to sustain. If, in the manner of either my associate or myself, you have discovered aught that was offensive or unpleasant to you, in the name of my client, let me ask you to dismiss it from your memory. Remember, that it is the law of humanity to err, and however numerous the errors we may have committed in your presence, rather credit them, if I may so ask you, to an over-sense of fidelity to our client.

This is the third occasion within some twelve years on which, although a single man myself, I have had the distinguished honor conferred upon me of upholding and defending the marriage relation. Within that period the three most exciting trials have occurred in this country that have ever occurred in it, and it has been my distinguished privilege to appear in every one of them. Why it is, when practically I could not enter into the sympathies of such a relation, I have been selected for this distinguished office, I cannot divine, unless it is that I regard marriage as a sacrament, and had I thought less of it I might probably have contracted it before now. The veneration with which I regard it is well known, and, although my lot in life is not suited to its practical advocacy, nevertheless, so far as my theoretical predilections are concerned, they are of that character which has induced my selection as a counsel to maintain the sacredness and inviolability of the relation, on the different occasions to which I have referred. To portray

the tenderness of woman's nature—to do justice to her charms—to exhibit fairly her perfection—to represent her as she is—has challenged and successfully defied the greatest imaginations, whether exercised through the pen of the poet, the brush of the painter, or the chisel of the sculptor. The extreme delicacy and sensitiveness of her constitution unfit her for those masculine contacts with the world, which are adapted to the sturdier attributes of man. What more power does she desire? What more power can she have than she already exercises? Her power is unlimited in forming and moulding to her liking a husband's disposition. The potter hath not more power over the clay to form one vessel unto honor and another unto dishonor, than has a wife over the attributes and character of her husband. If there is unhappiness in the domestic circle, can she not do much to dispel it? Poverty ceases to be felt amid the consolations of her companionship, and sorrow disappears in the presence of her smiles.

The peculiar virtues to be exemplified by the family queen are beautifully stated in scripture—Prov. xxxi. 10–31:

Who can find a virtuous woman? for her price is far above rubies.

The heart of her husband doth safely trust in her, so that he shall have no need of spoil.

She will do him good and not evil all the days of her life.

She seeketh wool, and flax, and worketh willingly with her hands.

She is like the merchants' ships; she bringeth her food from afar.

She riseth also while it is yet night, and giveth meat to her household, and a portion to her maidens.

She considereth a field and buyeth it; with the fruit of her hands she planteth a vineyard.

She girdeth her loins with strength, and strengtheneth her arms.

She perceiveth that her merchandise is good; her candle goeth not out by night.

She layeth her hands to the spindle, and her hands hold the distaff.

She stretcheth out her hands to the poor; yea, she reacheth forth her hands to the needy.

She is not afraid of the snow for her household; for all her household are clothed with scarlet.

She maketh herself coverings of tapestry; her clothing is silk and purple.

Her husband is known in the gates when he sitteth among the elders of the land.

She maketh fine linen and selleth it; and delivereth girdles unto the merchant.

Strength and honor are her clothing; and she shall rejoice in time to come.

She openeth her mouth with wisdom; and in her tongue is the law of kindness.

She looketh well to the ways of her household, and eateth not the bread of idleness.

Her children arise up, and call her blessed; her husband also, and he praiseth her.

Many daughters have done virtuously, but thou excellest them all.

Favor is deceitful and beauty is vain; but a woman that feareth the Lord, she shall be praised.

Give her of the fruit of her hands, and let her own works praise her in the gates.

There are, gentlemen of the jury, two incidents of this trial that demand notice here. I do not on this occasion mean to indulge in any undue severity in reference to the private counsel who has appeared in this prosecution. He is to take no part in the argument of this case before the jury, and it would be ungenerous and unmanly in me, now that he has virtually retired from the case, to make him the subject of any bitter assault in the remarks I may utter hereafter. I have the right, however, and it is my duty, to refer to his appearance upon this occasion. The appearance of that gentleman has not been so objectionable as his extreme technicality, and I think I should be sustained by the response of every juror here, if he could give it to me when I called upon him for it, that this prosecution has partaken altogether too much of the nature and character of a private proceeding. There are some particular parts of the management on the part of the prosecution to which I will refer in a few moments, which will show you more readily the verity and propriety of this remark.

The other incident, to which I desire to make a passing allusion, is this—and I do not propose to more than call it to your attention, and the rather because I wish to dissent from the precedent which has been attempted to be established upon this trial—in a community as heterogeneous as ours, where there is so large a foreign element in our population, discriminations on the score of nationality, so exceedingly out of place and inappropriate on all

occasions, are particularly so when exhibited under the auspices of a public prosecution. The formation of the jury was delayed one day in this matter, by the extreme captiousness of the prosecution. Three competent jurors were found, two of them belonged to one nation, and one to another, and yet, for some cause or other, although they were good and reputable citizens, the People of this mighty state through its accredited organ, the prosecutor of this county, objected to their sitting upon the decision of this indictment. In our state—and this is an anomaly—in all capital cases, and in all cases involving a punishment of or beyond ten years' imprisonment in a state prison, the prosecution have the right to exert what are called five peremptory challenges; that is, the right to set aside a juror for no other cause than that they are not willing to accept him.

I shall ask you, gentlemen of the jury, to carry in your minds certain principles which you will hear me hereafter, more or less, amplify in some suggestions I shall make to the court, as to what we suppose to be the law the court should lay down to the jury for their guidance in this case. This is a case of murder or nothing. There must be no compromise here. If Mr. McFarland is guilty at all, he is guilty of murder; and the juror who would compromise him into the state prison would violate his oath just as much, as if the prisoner were guilty of murder and he did not convict him of that crime. There can be no medium verdict here, and so I place this man before the jury. The prosecution are not, by a species of strategy, to fall into a kind of inferior conviction. That is one of the shifts of diplomacy sometimes called into requisition by a prosecution. They indict a man for murder, intending to get him into the state prison, and then they exercise their humanity by saying, "We do not press the case against him for a conviction of murder; we only ask a conviction of manslaughter." The jury are oftentimes misled in that way. This is a case of murder or nothing, and so I will put it to you, and I will presently show you that the beloved James T. Brady, on the trial of Cole, scorned the idea of the jury convicting his client of manslaughter, when it was murder or nothing; and that they ultimately, on that intimation from him, rendered a verdict of acquittal. A compromise is a violation of your oaths. This case ought to be looked straight in the face. If Mr. McFarland is responsible for his act at all, he is responsible for the highest crime known to the law. If the testimony has shielded him from a conviction of that offense, he is entitled to a clear verdict of acquittal at your hands.

Although I have no right to give you the law, because that

comes from the court, yet you are at liberty to carry in your minds, in hearing my argument, these additional principles. If upon the whole case, you entertain a reasonable doubt as to whether Mr. McFarland was sane or insane at the time of the shooting, you are bound to resolve that doubt in his favor. If this case is so balanced that you cannot tell whether he was sane or insane at that time, you are bound under your oaths to acquit him, because in convicting him of murder you sustain this indictment, which charges that in slaying Albert D. Richardson, the prisoner was moved and stimulated by the instigation of the devil. A man may be insane as to one man, and perfectly sane as to the rest of the world. A man can be deprived of his mind on one subject. A man can be mentally deranged in reference to a particular man, or a particular set of men. So far as he acts within the limits of his derangement he is not accountable, but if he goes outside of those limits, and attacks the rest of the world, he draws on his head the same accountability as if he was perfectly free from mental alienation.

An important consideration you are not to overlook is—that human science, in reference to the mind, is limited at the best. The condition of the human mind is a subject of doubt in itself. It cannot be inspected, and even where derangement is known to exist, there may be an undue limitation of it. The jury are consequently required to be humane and liberal, for they assume to pronounce upon that as to which they may be mistaken, or as to which they can judge erroneously. There is a difference among medical men as to whether insanity is a disease of the soul, or a disease of the body, and you will remember that if you hold that the human mind exists through the perceptions—by a species of external action upon the brain—you seem to destroy the immortality of the soul altogether. There are three theories on the subject of insanity—the psychological theory, of those who insist that the soul is independent of the body, and that insanity is a disease of the soul; the somatic theory, that insanity is a physical disease; and the intermediate theory, of those who advance the capacity of the soul to impart disease to the body, and the capacity of the body to impart disease to the soul. This is one of the remarkable mysteries which human science cannot fathom, and as to which it can only speculate. It will be for you to exercise your judgments, under your oaths, as to the medical testimony, precisely as you shall consider most consistent with reason.

To enable you, gentlemen of the jury, to judge how strong a feeling is aroused by the compromise of a husband's honor, let

me invite your attention to the marriage relation as exhibited in Scripture. Marriage is a Divine institution, and to judge of it by any human book would be absurd. It would be idle for me to read you a human book to show how strong a man loved his wife, when the Bible, which speaks from the Deity, tells you what marriage was created for, and what feelings the Almighty imparted to it. I read from the Scriptures here simply as I would read from an ordinary book, to show you what was the strength of this man's feelings when invaded and outraged by the man whom he is charged with sending to his grave. When Adam was presented with woman, formed by the Almighty from one of his ribs, taken from him in a deep sleep, Adam said, "This is now bone of my bone, and flesh of my flesh; she shall be called woman, because she was taken out of man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife, and they shall be one flesh." One flesh has one set of feelings. There is a perfect unanimity of feeling in one flesh. Hence, you observe that when man and wife are mated they are the same, and both feel the same. An outrage to one is an outrage to the other. The New Testament contains the same sentiment, thus: "Wherefore, they are no more twain, but one flesh; what, therefore, God hath joined together, let no man put asunder." This furnishes an idea of how intensely husband and wife should love one another. They are to be one in spirit, as they are one in body. Their hearts are to beat in unison. It may be that they do not reciprocate one another's love; but that may not affect the feeling of whichever of the two parties has the appropriate amount of love. If the woman does not love the man, but the man loves the woman with all his soul, the man's feelings are just as strong as though the woman returned his attachment, and an outrage upon those feelings, even though his attachment is unreturned, is just as serious as though the outrage was upon a marriage relation, where the hearts of husband and wife beat in unison.

Let me now read to you some verses from Proverbs, which were recited by the beloved James T. Brady on the trial of Sickles in Washington, with which we were both connected, in the defense; because the view they held was that you cannot understand what marriage is, unless you go to the source from which it emanated. There is but one source, and that is the Bible.

The feelings of a man at the discovery of his wife's infidelity, and the doom of the adulterer, are significantly and powerfully portrayed in these verses:

Can a man take fire in his bosom, and his clothes not be burned?

Can one go upon hot coals and his feet not be burned?

So he that goeth into his neighbor's wife; whosoever toucheth her shall not be innocent.

Men do not despise a thief if he steal to satisfy his soul when he is hungry;

But if he be found, he shall restore seven fold; he shall give all the substance of his house.

But whoso committeth adultery with a woman lacketh understanding; he that doeth it destroyeth his own soul.

A wound and dishonor shall he get; and his reproach shall not be wiped away.

For jealousy is the rage of a man; therefore he will not spare in the day of vengeance.

He will not regard any ransom; neither will he rest content though thou givest many gifts.

Those who dishonor husbands are here warned of their doom. It is decreed against them by Heaven. A wound and dishonor shall they get, and husbands will not spare them in the day of vengeance. This destiny is certain. The wisdom of Solomon, which was inspired, said it, and so it must, and so it will be, until human nature is formed anew, and different feelings and impulses are bestowed upon us. Jealousy, which defies and bears down all restraint, whether it be what we technically call insanity or not, is akin to it. It enslaves the injured husband, and vents itself in one result, which seems to be inevitable and unavoidable.

Where jealousy—what the Scripture calls jealousy—which is what we call insanity, for the purposes of this trial—takes possession of a man's breast, he will not spare in the day of vengeance; that is, he cannot spare; for the Deity did not make man strong enough to stand a provocation like that. If provoked, the end cannot be averted. * * * *

A vicious will, without a vicious act, says Blackstone (4 Bl. Com., 21), is no civil crime. So, on the other side, an unwarrantable act, without a vicious will, is no crime at all; so that to constitute a crime against human laws, there must be, first, a vicious will, and secondly, an unlawful act, consequent upon such vicious will. If there be a doubt about the act of killing, all will concede that the prisoner is entitled to the benefit of it; and if there be any doubt about the will, the faculty of the prisoner to discern between right and wrong, why should he be deprived of the benefit

of it, when both the act and the will are necessary to make out the crime? The same writer also remarks, that where there is a defect of understanding, the will does not join with the act; for where there is no discernment there is no choice, and where there is no choice there can be no act of the will, which is nothing else but a determination of one's choice to do, or abstain from, a particular action. He, therefore, that has no understanding, can have no will to guide his conduct. I am not controverting the legal presumption in favor of sanity, until the contrary appears. I am not deal. ing with legal presumption of any kind. I am treating of doubts and uncertainties touching guilt or innocence, which arise upon the trial of most capital offenses, and of the obligations which the law imposes, and which reason and humanity demand, that such doubts and uncertainties shall be removed before there can be a conviction, and a consequent deprivation of life."

Coke says: "When a person of sound memory and discrimination unlawfully killeth any reasonable creature in being, and under the king's peace, with malice afore-thought, express or implied." It is to be remarked that every member of this sentence is of the weightiest import in determining the constituents of the crime. The killing must have been effected by a person of sound memory and discretion. It must have been an unlawful killing; that which is deprived of life must have been a reasonable creature in being, under the king's peace; and the killing must have proceeded from malice, expressly proved or such as the law will imply, which is not so properly spite or malevolence to the deceased as any evil design in general; the dictate of "a wicked, depraved and malignant heart." Every one of these things must have existed, in order to make out the crime, and they must be proved or presumed upon the trial to have existed, or the prisoner is to be acquitted. They are primarily a part of the case of the prosecution, to be established to the satisfaction of the jury beyond any reasonable doubt. The law presumes malice from the mere act of killing, because the natural and probable consequences of any deliberate act are presumed to have been intended by the author. But if the proof leaves it in doubt whether the act was intentional or accidental, if the scales are so equally balanced that the jury cannot safely determine the question, shall not the prisoner have the benefit of the doubt? And if he is entitled to the benefit of the doubt in regard to the malicious intent, shall he not be entitled to the same benefit upon the question of his sanity, his understanding? For, if he was without reason and understanding at the

time, the act was not his, and he is no more responsible for it than he would be for the act of another man."

This is the law of Chief Justice Hale—that no man can commit a crime unless he has the control of his will—and our court of appeals, as will be seen hereafter, has decided that *frenzy* is a ground of exculpation from the consequences of an act done under its influence. It was elementary law two hundred years ago that *understanding* and *will* had to concur, to constitute a crime. In the McCann case, in one of the extracts read by me from the opinion of Justice Brown, we have the proposition as laid down by Blackstone, and I would say that no one has ever been able to state a legal proposition with a clearness and beauty equal to Blackstone. An unwarrantable act without a vicious will, is no crime at all, and a vicious will without a vicious act, is equally guiltless. Our statutory crime of murder in the first degree must have, first, a vicious will, and secondly, an unlawful act consequent upon it. "Where there is no discernment there is no choice, and where there is no choice, there can be no act of the will, which is nothing else but a determination of one's choice to do, or abstain from, a particular action."

We ask the court to charge the following propositions to the jury: Even if the evidence as to the insanity of the defendant should leave it in doubt as to whether he was insane at the time of the commission of the alleged act, if it also leaves in doubt his sanity at that time, he is entitled to an acquittal. Though the evidence may leave the defense of insanity in doubt, if upon the whole evidence in the case the jury entertain a reasonable doubt as to the perfect sanity of the defendant at the time of the commission of the alleged act, they are bound to acquit him. If the jury cannot say beyond a doubt that the defendant was sane at the time of the commission of the alleged act, or cannot say whether, at that time, he was sane or insane, they are bound to acquit him. If the jury entertain a reasonable doubt upon all the evidence in the case as to the guilt or innocence of the defendant of the crime alleged against him, he is entitled to an acquittal.

In England, the lives of two of their sovereigns have been attempted within this century, and in both cases insanity was recognized and admitted as a complete defense. We all know that whatever difference there may be in the loyalty of an Englishman to his government, he is tenacious of his affection for his sovereign, and all Englishmen are anxious and sensitive when the safety of the sovereign is interfered with or invaded. In this case, when these feelings and prejudices must have increased the horror of the

crime, Hadfield was acquitted upon the simple ground of insanity. He armed himself with a pistol, entered the theatre, and stayed there thirty or forty minutes, apparently as sane as any man in it, and when the king stepped forward to the front of the box to make his acknowledgments to his subjects, as they were cheering him. he stood up, took deliberate aim, and fired several shots at the king. He was arrested, tried, and acquitted upon the ground of insanity. So that in that country the fullest scope is given to this plea, even where the sovereign is concerned, and the defense always prevails there in proper cases.

It is a principle of the common law of the land—the greatest system of human wisdom ever given out to the world—that the law does not excuse a man who makes himself drunk to slay his neighbor. The law recognizes no right in him to set up his immorality against his criminality; but if his neighbor makes him drunk by force or contrivance, and he should commit a crime while in that state of intoxication, the principle would not apply. In the first case it is self-imposed madness, and in the second it is a forced or compelled madness.

Does not this analogy hold good here? Who made this man drunk? Richardson. And he slew him. And how can it be claimed that this man is to pay, for the deed which Richardson constrained, the forfeit of his life. That which goes into a man's mouth, and disorders his brain, is as nothing to that which goes into his mind and maddens his intellect. Who reduced this prisoner to a condition in which he was bereft of consciousness and will? Who mixed the contents of and compelled him to drain the bitter cup from which he drank for years? Was it not this which caused his derangement?

The man who lays a slow match to the happiness of his neighbor and maddens and frenzies him, ought to be compelled to take the consequences of what he thus brings about. The prisoner was the victim, not the cause of his frenzy. We want the court and jury to remember that this man did not madden himself, but that he was maddened by the combination, unveiled and exhibited by the evidence on this trial. The suddenness of the explosion is no argument against it, for sudden insanity exhibits itself in delirium in sickness. Sometimes it disappears almost as suddenly as it came, yet an act done under its influence is guiltless.

In this connection, I desire to refer to a case once very familiar in this county, where the defense was conducted by my own brother, who offered on the trial no medical evidence in support of the allegation of insanity. It is the case of Amelia Norman.

The prisoner was indicted in this court for an assault with intent to kill. She had been led astray by a man, who deserted her after he had ruined her, and appeared determined to turn her over to a fate almost inevitably awaiting a fallen woman. She was willing to give him up, but wanted some assistance from him to start her in respectable life. He refused her this, although she tried to soften him in every way.

She surrendered herself to absolute despair; and in a moment of frenzy, as he was entering a public hotel in this city, first appealed to him in piteous tones, and finding him inexorable, plunged a knife in him, almost taking his life. This was the act for which she was indicted, and the trial took place at the January term of this court, 1844. After a trial of four days, she was acquitted, and when the verdict was rendered the welkin rang with the cheers of the populace, loud enough to be heard blocks off from the court-room.

She was taken in hand by a celebrated authoress, who heard of her wrongs and stood by her until she passed through that ordeal. There was no medical evidence as to the condition of her mind when she committed the act, but, as in the Sickles case, the jury were left to tell what it was from their own knowledge of human nature. The recorder, in his charge to the jury, made use of this remark, as reported in one of the newspapers of the day, referring to the defense of insanity which had been set up: "That the best rule for the government of the minds of the jury was their own common sense view of the case," meaning that that was the correct mode of passing upon the case under the legal instructions received from the court.

We did not introduce any evidence of insanity in the case of Daniel E. Sickles, because we thought it unnecessary, as he slew the seducer of his wife as he stood waving his handkerchief, with adulterous intent, in the open street. We went to the jury upon the common sense of the matter. We knew that no man could be anything else than frenzied under a provocation like that.

You do not want a doctor to tell you how you would feel, if, on returning home, you found your house had fallen, burying its inmates beneath its ruins. How much more harrowing the ruin when, instead of the material household, it is the moral household that falls! How much greater the calamity! In this case of Amelia Norman, the recorder left it to the jury, as men of common sense, to say whether, when she found her seducer was inexorable in his determination to entail upon her lasting ruin, he had not himself provoked that moment of insanity in which she plunged her knife into his bosom.

I will now refer to the case of *The People v. Kleim*, and here again we desire to return our thanks to Judge Edmonds for the great interest he has taken in this case. Kleim's case will be found reported in I Edmond's Reports (Select Cases), page 13.

This prisoner was tried at the oyer and terminer in this county for March, 1845. He was indicted for a most barbarous homicide, in setting fire to the building in which the deceased (a woman) resided, and forcibly detaining her therein, at the same time inflicting wounds upon her with a sharp instrument, by means whereof she was suffocated and injured so as to cause her death. The trial occurred before Judge Edmonds and two aldermen, and resulted in his acquittal on the ground of insanity. The disease appeared to be monomania or melancholia. In this case, moral insanity was introduced into and firmly established as a part of the jurisprudence of this state. The charge of the judge to the jury was as luminous, as accurate conception and clear language could make it.

In one place he said: "If some controlling disease was in truth the acting power within him which he could not resist, or if he had not a sufficient use of his reason to control the passions which prompted the act complained of, he is not responsible." In another part of his charge he said: "And it must be borne in mind that the moral as well as the intellectual faculties may be so disordered by the disease as to deprive the mind of its controlling and directing power." In another part of his charge he said: "In order then to constitute a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong, to remember and understand that if he commits the act he will be subject to punishment, and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it. If, on the other hand, he have not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or intellectual powers are so deficient that he has not sufficient will, conscience, or controlling mental power, or if through the overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts."

If your honor will go over this subject, you will find that the doctors are right in saying that the test of intellectual insanity is absurd when applied to perceptional, emotional, or volitional insanity. You will be kind enough to observe this, and I hope that in this case we will have from the court, in its charge to the

jury, some such originality on the law of insanity as was had from Judge Edmonds in the Kleim case. He was the first judge who planted this doctrine of moral insanity in this state, and he did it because when "the right and wrong test" was first applied to defenses of insanity, it was not discovered or understood that the perceptions, emotions, or will could be diseased, as distinct from the intellect.

I desire now to call attention to the case of *Freeman v. The People*, 4 Denio's Reports, 9. The prisoner had been sent to the state prison, at Auburn, for horse stealing. He was probably innocent, and, on his liberation, deeming that he was entitled to be paid for his labor during his term of imprisonment (five years), he endeavored to commence suit against different individuals to obtain compensation. Not succeeding in this, he concluded that he must commence killing with that view, and accordingly commenced with the family of Mr. Van Nest, who resided some four miles from Auburn. He killed four persons, and seriously wounded one.

He was indicted for the homicides at the Cayuga oyer and terminer. The fearful character of his crimes (as they were believed to be) rendered his conviction a foregone conclusion. The trial occurred in July, 1846, and resulted in a conviction of murder on one indictment. He was defended, as a matter of charity and humanity, by the Hon. William H. Seward. Many will remember the bitter feeling against the prisoner existing in our own community. He was a negro, and his victims were whites. Even against his counsel prejudice uttered itself, because of the color of the slayer and slain. The defense was that he was an idiot, or insane.

The conviction was carried, on writ of error, to the supreme court, where the judgment of death was reversed, and a new trial granted. Pending the new trial (in August, 1847), the prisoner died. An examination of his brain after death showed disease, proving that the condition of the brain is not to be reached when a man is alive, and proving his unaccountability before the commission of his act. An honest jury had, mistakenly, pronounced him sane, realizing the strength of public feeling against the defense of insanity.

Beardsley, J., who delivered the opinion of the court, construed our statute as to unaccountability for a criminal act committed in a state of insanity, and held that the words "no act done by a person in a state of insanity can be punished as an offense" referred to a state of insanity "in reference to such act." He rather condemns the submission of the test of right and wrong in the abstract, and says that "the insanity must be such as to deprive the party

charged with crime of the use of reason in regard to the act done." Partial insanity, where it covers the act done, is fully vindicated by this able jurist, who claims the fullest irresponsibility for an insane act. He illustrates this by showing that a man, partially deranged, does not necessarily commit an insane act. It is only where his deed is the result of the derangement. The importance he attached to the insanity of an act is visible in the remark, "the act, in my judgment, must be an insane act, and not merely the act of an insane man." It will be observed how applicable that principle is to this case. If the jury believe that the shooting of Richardson by Mcfarland, on the afternoon of November 25th, 1869, was an insane act, the prisoner is not responsible for it, and though it would not necessarily follow because the prisoner was insane on some subjects, that he was insane as to that particular act, yet if he was insane as to that act and sane on other subjects, that would not deprive him of his right to irresponsibility.

I now refer to the case of Cole, who was twice tried at Albany, I think, in 1869. On the first trial before Justice Ingraham, the jury disagreed. On the second trial, before Justice Hogeboom, he was acquitted. I cite the case for some of the principles contained in Judge Hogeboom's charge to the jury, as reported in 7 Abbott's Practice Reports (new series), page 321. As the court will remember, Cole was indicted for the homicide of one Hiscock, once a member of Assembly in this State. Hiscock seduced the wife of Cole, who was an officer in the army of the United States during the war, and some days before he met Hiscock at Stanwix Hall, Albany, his wife had communicated to him the fact of her dishonor. He met him, and drawing a pistol, shot him, and the question was whether the presence of Hiscock rendered him irresponsible for his act at the time he shot him—whether the operation of the presence of Hiscock upon his mind was such as to frenzy him, and to render him unaccountable for what he did. Judge Hogeboom, in one part of his charge, says: "The confessions, or alleged confessions, of the wife do not prove it. They were not admitted for such a purpose, and are not to have that effect. Their introduction was permitted, not as furnishing evidence of the facts themselves, but as communications made to the husband, and which were calculated more or less to operate upon his mind, and influence his conduct, and to enable you, in the light of subsequent events, to judge how far they did so operate, and to determine to what extent the knowledge or information of these facts was calculated to explain and to mitigate, or to justify the homicide subsequently committed. As interpreting the prisoner's subsequent

conduct, as throwing light upon the state of his mind, they are admissible and proper to be considered." Again, he says: "In this case the adulterer—if adulterer he was—was not detected by the husband in the actual commission of his crime, nor under circumstances from which its then very recent perpetration, so far as the evidence discloses, could have been fairly inferred. The period of adultery—if adultery there was—was long since passed. The knowledge or information of its commission had been communicated to the prisoner several days, at least two or three days before, and a sufficient time, in the judgment of the law, had elapsed for the passions to cool, and for reason so far to regain her undisputed or real sway as to forbid individual vengeance, and to pronounce the act of premeditated killing—if such it was—the crime of murder.

"True it is, as I have already informed you, if, notwithstanding this lapse of time, the crushing weight of this domestic tragedy had driven the prisoner's mind to absolute distraction, and dethroned the reason of the husband, he is permitted to find immunity from punishment in the mental alienation with which he was thus overwhelmed."

As regards this prisoner, it would seem that his desertion by this woman, and her almost notorious cohabitation with Richardson from the period of her desertion to the time of the shooting in question, are not the only maddening causes we have to rely on, but that he was principally maddened by the reflection that they still had possession of his youngest son, and that, if they carried out their programme in reference to that son, they would transfer him from his natural to his artificial parent, Richardson, and would remove from him the name of his natural father, and put upon him the name of a father chosen by this wife. It was the distraction consequent upon the inability to discover whether they would not place this son beyond his father's reach altogether, which revived and reanimated the previous causes, and gave them freshness, as though they had just occurred, notwithstanding they had occurred some two or three years before.

Mr. Brady—whose name can never be mentioned by any one without the most melancholy recollections, that we ever lost him—nor without the most pleasurable recollections, that he ever should have existed—used this language, in relation to that portion of the charge to the jury in which the judge intimated to them that, if the facts warranted, they could return a verdict of "manslaughter" against his client: "With reference to what has been said by the court, upon the question of finding the accused guilty of

'manslaughter,' I desire to say on behalf of the prisoner, that, in the judgment of his counsel, there is no rational or possible view by which the offense can be demonstrated 'manslaughter,' and that the prisoner declines to accept the offer of that sympathy that would induce a verdict for that offense, and would rather die than be sent to the state prison."

The jury retired, returned to the court for further instructions, and then retired again. "Subsequently," for I read from the report, "they came into court, and the foreman stated they found the prisoner to have been sane at the moment before and the moment after the killing; but they were in doubt as to his sanity on the instant of the homicide. The judge charged the jury that they must give the prisoner the benefit of the doubt, if they had such rational doubt, founded upon the evidence, and could believe such doubt to be well founded upon such a condition of the case as was presented by this statement of the jury. The jury rendered a verdict of 'not guilty.'"

The jury in the Cole case were instructed that if he was sane immediately before and immediately after the shooting of Hiscock, nevertheless that he was entitled to the benefit, and was within the meaning of our statute as to insanity, if he was insane at the very point of time (of which they were to be the judges) of shooting Hiscock—that that would exonerate him from the consequences of the act preferred against him as murder in the first degree. Judge Hogeboom delivered this instruction to the jury which we ask to have repeated in this case, as to the immunity resulting from a recent or sudden cause, operating upon the mind of Cole: "If the jury believe that, at the very time of the commission of the act alleged against him, from causes operating for a considerable length of time beforehand, or recently or suddenly occurring, the defendant was mentally unconscious of the nature of the act in which he was engaged, he was and is legally irresponsible for it."

The jury can hardly fail to believe that when the deceased entered the *Tribune* office he did not expect to see the defendant, nor the defendant him, for there is no evidence to show that he anticipated meeting Richardson there. On the contrary, if he had any purpose, it must have been to see Mr. Sinclair, for he was there in the morning inquiring for Mr. Sinclair, and if he had seen him that interview might have allayed his distraction, and he would not have gone again unconsciously into that office as he did. There is not only no evidence that in the afternoon Mr. McFarland expected to find Richardson in the *Tribune* office, but there is

no evidence that the inmates of that office expected him there at the time. My solution of the case is this, that whenever Richardson met McFarland before, McFarland could and did control himself, and went out of his way; and that on this particular occasion, he encountered him in his insane mood, and when he was entirely beyond the power of self-control. I mean to argue from the facts, that, on other occasions, McFarland was rational, and controlled himself, but that that retributive justice, which has prescribed the fate of adulterers, directed Richardson on this occasion into contact with him when he was in that demented condition which rendered him an involuntary instrument in the execution of Divine or Heavenly vengeance. I mean to argue that he did not expect to see the deceased when he entered that office; but that, at the sudden appearance of the destroyer of his domestic peace, the memory of his great wrongs rushed with overwhelming force upon him, and placed him under the influence of that ungovernable frenzy in which he committed the act. Justice Hogeboom says, that when a person's faculties are for a time unsettled, and insanity enthroned in their place, he is not responsible for his acts.

In *Willis v. The People*, 32 N. Y., the great intellect of Chief Justice Denio remarked, "that if the prisoner, when he killed the deceased, was in such a state of mind as to know that the deed was unlawful and morally wrong, he was responsible, and that otherwise he was not."

Here is a case which can well be understood. "Morally wrong," are words that men of science can deal with. Many things are contrary to law which are not opposed to morality. This restricts the ability to judge between right and wrong to the capacity to judge between what is morally right and wrong. Should this court advance to this jury the "right and wrong test," it is important that the ability of the prisoner to discriminate between what is "right and wrong," should be qualified by the word "morally," so as to constitute an ability to judge between what is morally "right and wrong." Let it be understood, "morally wrong," for upon a proper interpretation of those terms depends an important issue. To submit the "right and wrong test" in the abstract, as it has been said, without the qualification of an ability to judge between right and wrong in relation to the particular act charged, would seem to be monstrous, and to be hardly less irrational with that qualification. The word "moral" or "morally" makes it more reasonable. It is wrong to disobey a corporation ordinance forbidding the putting of ashes on the sidewalk, though it cannot well be morally wrong. Sufficient intelligence to know that the viola-

tion of such an ordinance was wrong would not, or might not, be sufficient to discriminate between what was "morally right and wrong," There is nothing in respect for, or the violation of, such an ordinance, one way or the other, or very little, to indicate whether a man is sane or insane, or to enable an inference to be drawn as to his capacity to distinguish between "moral right and wrong." To put such a test to a jury as the ability to judge between "right and wrong," terms in a certain sense predicable of obedience to or disobedience of such an ordinance, cannot be claimed to be the proper standard.

I shall refer now to the case of Mr. Sickles, which occurred in the city of Washington, in the District of Columbia, in the year 1859; and when I refer to it I call from their graves the illustrious counsel with whom I had the honor to co-operate on that memorable occasion, to give to me the benefit of their eloquent tongues, as I stand here, trying to save this injured man from the peril which hangs over him. We trust they are in that sphere where happiness is neither measured nor limited. They have left behind them noble records and noble utterances, which, when they come to be quoted before this jury, will reach their hearts with a penetrating power that never can be attained by eloquence of mine. Mr. Sickles was tried for killing Philip Barton Key in the city of Washington. According to the testimony, Key had been considered by Mr. Sickles a reliable personal friend, and as such had been admitted to intimacy with his wife. It was also shown by the testimony that he was under strong obligations to Mr. Sickles; but he took advantage of the kindness and consideration with which he was treated, and debauched his wife. It so happened that he was around Mr. Sickles house shortly after the wife had made a confession of her shame to her husband, waving his pocket-handkerchief as an adulterous signal, and as his bad fortune would have it—and as Richardson's bad fortune would have it—he ran upon his death when he little expected it. Oh, how just that retribution! How well would libertines do to consider, when they plan their moral demolitions, that before they reach the goal of their ambition they may be intercepted in their pursuits as these men were! The evening before the fatal Sunday, the wife of Mr. Sickles had made a confession to her husband, and he was standing by the window when he saw Key pass by giving the adulterous signal, whereupon he rushed out in a state of frenzy, and slew the deceased, giving him three wounds with a loaded pistol—and the jury would have sustained him if he had given him three hundred.

He was determined to do the thing right, and the jury sustained him in it.

The prosecution claimed that it was a case of "remorseless revenge," and an attempt to add mutilation to murder. The jury, at the close of a trial occupying over four weeks, acquitted the defendant after an absence and a deliberation of about an hour and a quarter. On that occasion two propositions were laid down under the auspices of the eminent counsel, with whom I had the honor to be associated. One was, that the man who debauched the wife of his friend earned his death, and got it meritedly; and the other, that the husband could not have held back his hand from slaying him, if he had tried. Mr. Stanton joined in and approved of these propositions, and so did Mr. Brady. There was no summing up, but merely an argument to the court for "instructions" to the jury. The court granted the instructions to the jury contained in the two following "prayers" (among others), as asked by the defense: "If, from the whole evidence, the jury believe that Sickles committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not, in law, guilty of murder. If the jury believe that, from any predisposing cause, Sickles' mind was impaired, and at the time of killing Key he became or was mentally incapable of governing himself in reference to Key as the debaucher of his wife, and at the time of his committing said act was, by reason of such cause unconscious that he was committing a crime as to said Key, he is not guilty of any offense whatever."

The question was not how long it had taken Mr. Sickles to reach the condition of mind in which he was—how long the cause had been working to produce that state of mind. His condition was produced in an instant, and was engendered by the appearance of the man who had debauched his wife. Let me read to the jury an extract from the most eloquent argument of the late Edwin M. Stanton, better known as the great War Minister of modern times. He it was who directed the energies of this great nation during the civil war in which we were recently engaged. However individuals may judge his character, it seems to be generally conceded that he is more entitled to gratitude for the successful issue of that gigantic civil struggle, than any other person connected with that strife.

"What, then, is the act of adultery? It cannot be limited to a fleeting moment of time. That would be a mockery; for then the

adulterer would ever escape." We know that the adulterer has chances, whenever he comes in contact with the object of his lust. It is only a mere matter of meeting. If man and woman once commit adultery, the frequency of the adulterous act depends on the frequency with which they meet. It is always adultery. "But law and reason mock not human nature with any such absurdity. The act of adultery, like the act of murder, is supposed to include every proximate act in furtherance of, and as a means to, the consummation of a wife's pollution. This is an established principle in American and English law, established from the time of Lord Stowell, as will be hereafter shown. If the adulterer hire a house, furnish it, provide a bed in it for such a purpose, and if he be accustomed, day by day, week by week, and month by month, to entice her from her husband's house to tramp with him through the streets to that den of shame, it is an act of adultery, and is the most appalling one that is recorded in the annals of shame." Yes, but this case transcends it. Richardson hired a room, and put his bed—the craven libertine—so near the wall which divided him from the room in which this man and wife slept, that he could hear them even breathe. If he had had any decency in his composition, he would not have done this. He placed himself where he could hear every movement they made, and control the movements of the wife completely. "If, moreover, he has grown so bold as to take the child of the injured husband, his little daughter, by the hand, to separate her from her mother, to take the child to the house of a mutual friend while he leads the mother to the guilty den, it presents a case surpassing all that has been written of cold, villainous, remorseless lust." That does not for one instant compare with the wicked conduct of this Richardson, for he kidnapped this poor man's child, that he might carry on the adultery with her mother. He could not control her until he could control the child. "If this be not the culminating point of adulterous depravity, how much farther could it go? There is one point beyond. The wretched mother, the ruined wife, has not yet plunged into the horrible, the revolting condition, to which she is rapidly hurrying, and which is already yawning before her. Shall not that mother be saved from that? And how shall it be done? When a man has obtained such a power over another man's wife that he can not only entice her from her husband's house, but separate her from her child for the purpose of guilt, it shows that by some means he has acquired such an unholy mastery over that woman's body and soul that there is no chance of saving her while he lives, and the only hope of her salvation is that God's swift vengeance shall overtake him. The

sacred glow of well-placed domestic affection, no man knows better than your honor, grows brighter and brighter as years advance, and the faithful couple whose hands were joined in holy wedlock in the morning of youth find their hearts drawn closer to each other as they descend the hill of life to 'sleep together at its foot.' But lawless love is short-lived as it is criminal; and the neighbor's wife, so guiltily pursued, by trampling down every human feeling and divine law, is speedily supplanted by some new object, and then the wretched victim is soon cast off, and swept through a miserable life and a horrible death to the gates of hell—unless a husband's arm shall save her. Who, seeing this thing, would not exclaim to the unhappy husband, 'Hasten, hasten, hasten to save the mother of your child, although she be lost as a wife. Rescue her from the horrid adulterer; and may the Lord, who watches over the home and the family, guide the bullet and direct the stroke.' And when she is delivered, who would not reckon the salvation of that young mother cheaply purchased by the adulterer's blood—aye, by the blood of a score of adulterers? The death of Key was a cheap sacrifice to save one mother from that horrible fate which, on that Sabbath day, hung over this prisoner's wife, and the mother of his child." Thus you see, gentlemen of the jury, that this great man raised his hand and prayed that the Almighty would lend Himself to vengeance upon the adulterer, by nerving the arm and directing the bullet of the injured husband.

The following is the peroration of Mr. Brady's final remarks to the court on the "prayers for instructions:"

"And I will be permitted to say, whatever consequences may result from the declaration, that in view of all that has transpired in the city of Washington, to whose citizens on this jury Sickles commits his life, his character, all that is to elevate or to keep him in existence (for in our entire confidence in the integrity and judgment of your honor and this jury, we are convinced that no harm can come to Sickles out of this trial); in view also of the relations of Mrs. Sickles toward him before he came to this city; in view of what he knew of her, of the extending of this shame from the mother to the child, which we suppose the evidence fixes on Key, Sickles might have gone anywhere else in the world but to New York, if he had not resented that indignity. He could never have returned to the city of New York and been accepted for one moment among any of his former friends!"

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In John Manning's case, the prisoner was indicted in Surrey,

England, for murder, for the killing of a man, and pleaded not guilty. The jury, at the assizes, found that the said Manning found the person killed committing adultery with his wife, in the very act, and slung a jointed stool at him, and with the same killed him; and resolved by the whole court that this was but manslaughter; and Manning had his clergy at the bar, and was burned in the hand, and the court directed the executioner to burn him gently, because there could not be greater provocation than this.

This has been the law in this state since 1823; and I allude to it to prove how correct, legally, the estimate is we place upon the value of the marital relation. The court remarked to the jury that it was for them, under all the circumstances, to say whether "the crime charged upon the prisoner was murder or manslaughter, or justifiable homicide; and observed, if the jury were of opinion that the prisoner committed the act while the deceased was in criminal intercourse with his wife, it would not be murder, or even manslaughter, but would be justifiable homicide, *se defendo*. Her consent would be of no avail to increase or extenuate the crime, if in the husband's presence." Under this law, this husband had a right to avenge the betrayal of his wife: 2 Wheeler's Crim. Cases, page 47.

I repeat, there is no proof that Richardson was expected at the *Tribune* office, nor, as I have already suggested, that when Mr. McFarland went there, he expected to find him there, or to have him come in after he got there, or that he had any suspicion at all, or had any right to indulge a suspicion, that Richardson would be on those premises that afternoon. If that of itself is not sufficient to rebut the idea of premeditation on the part of Mr. McFarland, is it not clear that, if he was perfectly sane, and had wanted to kill Richardson, he would have selected a more auspicious spot than he did? If he went into the *Tribune* office, nerved to slay Richardson as a matter of previous determination, it is folly to say that when Richardson met him on previous occasions and put his eye upon him, he quailed; for a braver, more chivalric man than Daniel McFarland, if that be the fact, never lived. For a sane man to go into the lion's den to slay his adversary, where he was physically so disproportioned to the physical power of the establishment, as Daniel McFarland was in the present instance, strikes one as so incredible, that it has only to be stated to be rejected by the jury. When a man gets even with a wrong-doer, or means to get even with a wrong-doer, he takes him at a disadvantage; and if Mr. McFarland in this occurrence did knowingly give Richardson all the advantages they say he did, a braver man never drew

the breath of life. It seems absurd to us that he would walk into that establishment, pistol in hand, expecting to encounter Richardson, when the chances were that his pistol might have missed fire, and he would have been stamped to death by the physical force of the inmates. We submit, therefore, if you need any evidence as a starting-point to satisfy you that the defendant must have been out of his mind when he entered the *Tribune* office, that it is supplied by the fact that he gave the deceased all the odds in his power against himself.

Another suggestion I desire to call your attention to is this—the certainty with which the bullet of the injured husband takes effect —and I regard that as a strong moral lesson. You often read accounts of policemen who are fired at when they are endeavoring to arrest desperate characters. In some instances policemen will surprise burglars when engaged in their work. They oftentimes surprise them when escaping with their plunder. In attempting to arrest them sometimes three or four shots are fired in rapid succession at the policemen, near enough to take effect, but without harming them. Unless you suppose they are in coats of mail, impervious to the attack, how can you account for it in any other way than upon the principle that some unseen hand turns the bullet off. I have often myself been struck with the miraculousness of the escape of policemen under such circumstances; but in every instance where a frenzied husband sets about shooting his man, he succeeds; and one shot generally fetches the business. There seems to be a perfect certainty about the matter, from which there is no escape, thus showing the extreme moral justice of the act.

The prosecution have left this Mrs. McFarland before this court in the attitude of a mistress instead of a wife. I wish that to be distinctly borne in mind. We proved by Miss Anna Burns that the female she saw married to the defendant in December, 1857, now wears the name of Richardson, and the prosecution have dubbed her "Mrs. Richardson." They have not shown that she was divorced, or that there has been a subsequent marriage; and they have permitted her name to leave this court as being that of her paramour. The necessity for that was this: To have brought in that marriage would have, of necessity, placed Mrs. Calhoun before this court and jury in such a manner as that she must have been perfectly riddled, and to avoid that, they did not dare to go into the reason why Mrs. McFarland now bears the name of Richardson. I submit to you, on the evidence, that she appears to be nothing more or less than the mistress of Richard-

son, because they have not shown the first marriage was annulled. They have not gone into the proof on that subject, nor have they permitted us to go into it. We have the fact that the woman left her husband, and was never exonerated from that marriage. She now bears the name of a man who, we say, was her paramour; and she stands before the world in that character.

I now come to the occurrence itself—the shooting on the twenty-fifth of November, 1869. You will find that the evidence for the prosecution leaves it in a very unreliable state, and from the obscure manner in which it is left I argue that you will adopt your own presumptions as to what the occurrence was, rather than the affirmative evidence for the prosecution. All the witnesses for the prosecution are in the interest of the *Tribune* establishment.

THE KILLING WAS INSTANTANEOUS.

We believe there was scarcely an instant of time between the entrance of these two persons, and that the coincidence was brought about to work out the Divine vengeance, and that it was impossible for the adulterer to escape. Mr. King says it was fifteen minutes past five when the defendant came in and stood abreast of the desk. They make twelve minutes from his coming in to the shooting of Richardson, though the act must have been almost simultaneous. Mr. King says it was not very dark when the shooting occurred. The prisoner was in Mr. None's office not earlier than twenty minutes before five, and he was there nine or ten minutes, so that he must have left it a little before five o'clock in the afternoon. On that afternoon the sun set at twenty-nine minutes before five, and daylight, as usual, lasted about half an hour afterwards; so that that would bring dark at about one minute past five. Mr. King was right. We have no doubt the deceased was shot about dusk. They had gas lighted in the office, but we maintain it was not absolutely dark; that Mr. McFarland reached the office before it was full dark; that Richardson came in almost simultaneously, and that having, as Dr. Hammond says he had, congestion of the brain, to occasion an explosion nothing was needed but the application of the match.

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You are, gentlemen of the jury, men of common sense. You will perfectly understand, that if, on the Broadway side of this park, this man was in a condition in which he was not fit for personal liberty, he could not, in a few seconds, resolve himself into a perfect state of calmness. The explanation of this matter is this:

He was not there long enough to be observed by the inmates of that office. The thing was so sudden, they scarcely knew the man was there before the pistol was fired, and then there was such a disturbance and embarrassment, they were not conscious of what took place afterwards. They did not know enough to raise an alarm. It was not known any one was shot when he went out, nor did McFarland himself know he had shot Richardson in a vital part of the body. How did he know when he fired that one shot, that that shot had taken effect? Why was he permitted to retire without molestation? The answer is, that the thing was so instantaneous, and created such amazement and confusion, the persons there were hardly conscious of what went on.

He might have been in Mr. Sinclair's office, or any other part of the building; but I want to show how determined they are to destroy this man. Mr. Carver said he thought he saw him there at three o'clock in the afternoon. "Suppose," I said, "we show that at that time he was miles away from there, what then?" It was because of my hurling that bravado at him—a mere professional bravado—he was induced to shrink from what he stated, and retract every word of it. The object of that was to show that Mr. McFarland was mousing around the office waiting for Rich ardson.

As to the fact of Richardson being armed at the time of the occurrence, it is perfectly apparent. If it has no other signification than this, it shows that he was prepared to kill the prisoner. It shows precisely that he was armed to make himself superior to the man he had wronged; and you will perceive his guilt in this. Why did he wrap that pistol in a flannel cloth and hand it to a friend for the purpose of being concealed, when he did not know how many minutes of life where then left to him? Why did he carry out his wickedness against this man in trying to suppress so important an evidence as that, when he did not know how many minutes he had to live, and when he wanted to have it said, when he was gone, that he was assassinated—an unarmed man—by the man who had prepared himself beforehand to cause his death when he encountered him? He was so wicked to this man that, at the very last moment, he did not want it known to any person but those who would keep it concealed, that he had a malicious intention against the prisoner. He did not want to have it known, not only that he earned death, but that he was prepared to deal death to him who had suffered such great wrongs at his hands.

Let me ask your attention for a moment, gentlemen of the jury,

to the peculiarity of a husband's position. A husband outraged like this one has to do something; he cannot lie down under it. If he shoots he is a murderer, and if he sues he is a craven. If he wants money he has no spirit, and if he rises to the dignity of an avenging manhood he must go to the gallows. What is he to do? Is he to lie down under it? I have read you the undying words of the lamented Brady; I have read you the prayer of the immortal Stanton; and where is the man whose heart pulsates with humanity that does not respond to every sentiment contained in them. Let me here refer to the case of *Bunnell v. Greathead*, 49 Barbour's Supreme Court Reports, page 106, which was decided in this state in the Second Judicial District, where a husband got a verdict of ten thousand dollars against a party for debauching his wife. He had followed his wife to a wood-shed, caught her and her paramour in the very act of adultery, did not interfere, and, as his own witness, proved it on the trial. The jury gave him a verdict of ten thousand dollars, but the court set it aside upon the ground that the man who could quietly see his wife dishonored was entitled to no damages at all. That is the doctrine of the court. I ask your honor to look at this case, in which the court virtually decided that such a verdict, if upheld, would, in effect, countenance and build up vice and immorality.

Let me now refer briefly to a father's right to his child. This man makes no claim to the body of this woman; but he is a father, and he wants his child. According to the learned commentator Blackstone, that great duty of protection, owing by a father to his child, is a natural duty, rather permitted than enjoined by secular law, working so strongly as rather to need a check than a spur. Speaking of the obligations of maintenance a parent is under to his child, that great commentator uses language more potently descriptive of the extent and strength of paternal affection than anything of mine could possibly be. I will read his language: "The municipal laws of all well-regulated states have taken care to enforce this duty; though Providence has done it more effectually than any laws, by implanting in the heart of every parent that natural or insuperable degree of affection, which not even the deformity of person or mind, not even the wickedness, ingratitude and rebellion of children can totally suppress or extinguish." The reciprocal duty of children to their parents is beautifully described by the same writer. His language is, that "the duties of children to their parents arise from a principle of natural justice and retribution. For to those, who gave us existence, we naturally owe subjection and obedience during our minority, and honor and reverence ever

after; they, who protected the weakness of our infancy, are entitled to our protection in the infirmity of their age; they, who by sustenance and education have enabled their offspring to prosper, ought in return to be supported by that offspring, in case they stand in need of assistance. Upon this principle proceed all the duties of children to their parents, which are enjoined by positive laws." * * *

The woman was not alone in her iniquity.

Mrs. Calhoun, an accomplice, writes her:

"My dear Mrs. McFarland,"—After a while it is "My darling," and pretty soon she is ready to eat her up. "It was a good inspiration which led you to write to me, and I believe I wanted to hear from you."—In another place she says: "But for this ignorant present I could wish myself with you in the smallest farmhouse that ever took root in a cleft of the hills."

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"And you, I hope your desire and purpose for the stage has not faded" (Mrs. McFarland had evidently written nothing about the stage), "nor been trampled out by hard hoofs of necessity. Have you not had any encouragement? I am very useless in that way, having no direct theatrical influence, but I will try to obtain some." Is this not trying to get her on the stage? "I know that you would succeed, and I fully believe it to be your best and noblest work." It is said by some friends of this lady that these letters were not written for the public eye. No, they were not; and that is what makes them more potently significant. They were written for the eye and mind of one person, and their publicity was not reckoned on.

Well, she goes on: "Nothing so much as the stage needs good lives and good heads." This is not complimentary to the stage, nor is it true in point of fact. I have the honor of being acquainted with many noble men and women on the stage, and I have their testimony that the stage is as high morally, and in every other way, as any other avocation pursued on this continent. Then she says: "I know I could help you in the direction of your wardrobe, but I feel there is not much else that I can do."

Mrs. McFarland was an abortion as an actress—never could, and never was meant to succeed—yet Mrs. Calhoun says: "I think you have so many gifts, your beautiful voice, your changing color, your varying, soulful face, your earnestness and freshness of nature, your love for your art—and in your love for your children you have also the highest incentive. Dear child, I wish I could make

your path straight and smooth, to the highest success; but only that success is highest to which we make our way with pain and toil." This list of gifts for the stage was not true in Mrs. McFarland's case. She had none of the talents or requirements for the stage. It was simply a statement meant to work upon her weakness, and it did. Then she tells her, "If you do succeed in making an engagement, I shall not have one shadowy fear of your histrionic success, and I shall really feel that I have done some good in the world—a condition of feeling which I have often felt to be unattainable."

Commenting on the intercepted letters from Mrs. Calhoun to Mrs. McFarland, he said:

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It is enough for me to show that as a husband he had a right to speak in reference to the associates of his wife.

She then goes on to say: "It is profanation for you to stay with that man. You shall not! No woman ought to put her womanhood to open shame, as you have been forced to do for years." She never knew her until January, 1866. "It is most cruel, most devilish. You cannot work; you cannot advance; you can make certain of no future for yourself and the children, while you stay." Then she goes on to say: "My darling, you will leave him scathless; the world is more generous than we think about those things. Every thoughtful man or woman will justify you, and you can shake off the shackles and work with free hands. It is dreadful to have you fight against such odds. I think you could live—yourself and Percy—for what you earn now, and if you can only be free, so that you can improve, your salary will be increased. It is wonderful that you have been able to do anything with your disabilities, and I do think that now you may do so much. Oh, do leave him, my darling!" See what a prayer that is. "Oh, do leave him, my darling! It is so wrong that you should stay with him."

Friday Evening.

"My Darling—We have just received Mr. R.'s letter." The wretch was so exultant over his victory that the first thing he did was to write to those who would be most gratified at knowing the fact. "I am so glad that you have left M. Do not, I beseech you"—here is prayer all the time—"Do not, I beseech you, return. Do not let any weakness of mercy possess you." What is it that makes a woman angelic? It is the tenderness of her heart. It is the readiness with which her eye suffuses, and drops the tear of pity and sympathy at human suffering. Here she exor-

cises from her own bosom that celestial element of woman's character, and asks this wretched, erring woman also to expel it from the limits of her own breast.

"Do not let any weakness of mercy possess you." Don't forgive your husband. What a remark that to make. She wrote to a woman she knew was likely to forgive him. But she says: Don't forgive him; don't extend to him any mercy. "It is happy that the stroke has fallen, no matter what heart-break come with it."

He (pointing to the prisoner) sits here to-day as the result of that heart-break. That broken heart has placed him where you now see him."

"I could be glad that you suffer, if your suffering would keep you away from him. My darling, for whom I would die, do not so wrong your womanhood as to go back. You must not; shall not! When I come back you shall come straight to me and stay. I will have it so! I will come to-morrow, if you need me. Write me, my darling, all things; even if you are distracted—write."

She knew that the woman, then, had not given up all love for this man, but she had determined she should, if it was in the power of her persuasion to accomplish that result. I do not mean to read more of this letter than the final portion of it; it is this: "All my heart is yours. Let Mr. R."—she turns her then over to Richardson—"Let Mr. R. help you. He is good and strong. Stay where you are until I come, then come to me, my darling."

Read these letters for yourselves, gentlemen of the jury, and put your own construction upon them. One more letter, and I have done. I am not afraid, for I am emboldened by my oath to do it, to read these letters, and let them carry their own comments. This letter is not dated, but it was written in February, 1867:

"My Darling—I suppose you must be snow-bound, as I am, and I send a good-morning. Lillie and Junius pronounced your *Lady Capulet* better than Mme. S.'s *Juliet*. There is incense for genius. I shall work all day, and be ready to help you to-morrow." Gentlemen, tell me the meaning of what I am now going to read to you, and I ask the court to attend to it while I read it:

"Sacrifice yourself by going to Hennessey's, or in any other way. My fate cries out, and informs me that I wish to know him; really, to get at him. I am quite sure there is something behind his gray eyes and mobile face. I don't like knowing people indifferently."

Does not that mean this? "You go to Hennessey's, make his acquaintance, and then introduce me." Is that a false construction of it? If it is, I desire to stand corrected. I have always regarded this as a note which should never be offered to the public eye, and I have only consented that it be presented to the public, under a sense of duty that satisfied me I otherwise would be traitorous to this man. Let me read it over again, if there is a possibility of mistake about it: "Sacrifice yourself by going to Hennessey's, or in any other way. My fate cries out and informs me that I wish to know him; really to get at him. I am quite sure there is somthing behind his gray eyes and mobile face. I don't like knowing people indifferently."

"There are just three persons who are much to me in the flesh." They say that those initial letters are "You." There may be a doubt as to whether they are "J. R. Y.," but they are a man's initials. If you read this letter, you will find that it is not a female, but a man, she refers to.

A word, gentlemen of the jury, upon this intercepted letter. You have heard it read over and over again. It would be a waste of time to read it to you now. My construction of it is this: That it refers to a perfect system of philosophy, professed in and practised by this man Richardson. You will perceive—and almost the outset of the letter shows it—that the sooner he went to his grave, if this was his doctrine, the better for society—"Don't be disturbed about your family, little girl. Families always respect accomplished facts; my hobby, you know. I once outraged mine." Here he implies that she has outraged hers. She had no cause to leave this man, nothing of the kind. He continues: "I once outraged mine a great deal worse than you ever can yours, and they are the straightest sect of Puritans; but time made it all correct." I ask you this: Does he not here concede that in leaving her husband she outraged her husband? But he tells her that the iniquity of the outrage is really to be its success; that the world do not look to how ends are brought about, so long as they are brought about. "Accomplished facts" are all the world wants.

If this was the belief of this Mr. Richardson—and that it was we have his own handwriting—was he a fit man to live in society, if there was any legal way of depriving him of his life? What man could be more dangerous than the man who would say: "No matter how I get your purse, no matter how I get your wife—if I fail, I may be infamous; if I succeed, I am all right."

The counsel of this man must put his case before you. The court will tell you that that is their sworn duty, and they cannot

shrink from it, no matter whom it strikes. We are not asked to present to you our own convictions. We are bound to tell you this man's case, and to place it before you as he gives it to us, though it strikes the first and the tallest in the land. What right have I, in the performance of professional duty, to consider into what breast I strike a pang, so long as my act is called for by my professional oath. What would you think if, when you sought to pass that door, you were warned by those who are connected with the prosecution, that if you rendered a verdict in favor of this man, you would be shot to the earth? What would his honor upon the bench think, if he was told to-day that if he did not charge this jury against the prisoner he would affront those powerful influences that stand behind this prosecution, and that he could expect nothing but immediate death? What more solemn sanction binds him than me? What more solemn sanction binds you than me? I have taken an oath to defend this man before this court and jury, and to place before you all the material he has put into my hands, which I can possibly make available for his deliverance from this charge. What alternative have I but to do precisely as my oath of office demands—spread out the facts and argue upon them to you precisely as any other lawyer at this or any other bar would do?

Mr. Wakeman says he slept with Mr. McFarland, at his house in Twenty-sixth street, on Sunday night, November 14, 1869. After they had been in bed fifteen or twenty minutes, he spoke to him, and received no answer. After they had laid down about half an hour, he started up in bed, raised his hands, and exclaimed: "My God! my God! where is my child?" A moment after he laid down again, became restless, and then wakened. Mr. Wakeman went to Woodside with him on the eighteenth of November, to get tidings of his child. The defendant told him they were trying to get Danny away from him, and that was the ruling idea in his mind. Witness first went to a grocery store to inquire about the child, and brought back the report that Richardson was married to his wife. Mr. McFarland nearly fainted, cried, and was frenzied. The witness then went and made further inquiries, and reported to him the result, which was that Richardson had been there the day before, and had gone to Massachusetts, where the mother and Danny then were. Dr. Ward, in speaking of his dreams, said he told him he had dreams and visions about his wife and children, and that he must have them back or die. Dr. Miner says he frequently spoke to him about his dreams. He would ask him how he passed the night, and he would say: "My God! I passed a horrible night; I

could hear the voice of my little boy." He hears that voice now, and will hear it ever, until he is, as he should be, in the full possession of his rights as a father. He was mad, at the idea of being separated from his child. He almost became deranged at the suggestion. Where is the man, no matter how willing he may be to lay down or relinquish his marital rights, who is willing to give up his natural property in the issue of his own loins?

To Dr. Miner he frequently spoke about his dreams, and on one occasion said: "My God! my God! I have passed a horrible night. I have heard the voice of my little boy calling to me. I could see my wife in Richardson's arms. I sprang out of bed, trying to catch the villain by the throat. Then I woke in a tremor and perspiration."

I will here call your attention, gentlemen of the jury, to some very pointed testimony of some of the lay witnesses. Mr. St. John Green, one of Richardson's Boston counsel in the fight to keep this father away from his children, saw McFarland between April, 1867, and the close of the year. He said he appeared to be near the border-line of insanity. He had a wild look, and seemed as though he was on the point of disturbing the *habeas corpus* proceedings, when present at them. Edward K. Phillips, another of Richardson's Boston counsel, said that during that period McFarland behaved like a madman. His conversation was very painful. He was always going over his griefs. The witness mentioned this fact to his senior counsel, and left it to him to suggest to the court that McFarland was unfit to be the custodian of his children, from irrationality. Then the evidence of Mr. Eastwood, an intelligent merchant of this city. He had an interview with McFarland, near the time of this shooting, and he tells you: "My impression and opinion was that he was not in his right mind. I regarded him as a monomaniac." Mr. Peter Gilliespie, another witness, had an interview with him, in May, 1868, and he says: "I thought him perfectly crazy." He told this witness that he would be at his funeral in three or four days—that he intended to end his existence; that he could not live. Then there is the evidence of Mr. Coughlin, who was in the same office with McFarland, in June, 1869. Out of consideration for him, he was treated with attention and delicacy in the office. The duties they assigned him required no mind. They gave him such things to do as required little memory and thought. Yet he would forget all about them. They then put them down on paper, but he would still forget. He was understood to be in great trouble. On one occasion when Coughlin saw him, he was more nervous and excited than ever before.

He said: "My wife has got a divorce, and she is going to marry Richardson. He is going west to start a newspaper, and is going to take my wife and child with him." On this occasion he insisted on accompanying Coughlin, and he could not shake him off. His conversation was very incoherent, and it was sometimes impossible to make head or tail of what he was saying. Then there is the testimony of Mr. William Marsh, who was with him from January, 1867, when he was appointed to a position in Mr. McElrath's office, down to September of the same year. He says that, until in February, he was a sociable, kind-hearted, entertaining man; then all of a sudden he changed, and in March, 1867, he commenced talking to himself, and when a person took his hand to shake hands with him, the fingers were contracted, so that you had to pull them out to shake hands with him—that this was after he secured the intercepted letter, and that he had a horrible expression of the eyes.

Ten days before the shooting, Mr. Marsh met him by St. Paul's church; and he was then in such a state of nervousness, he did not dare to leave him in the street. He said to Mr. Marsh: "Lend me thirty dollars. If I had it, I could upheave the universe; but I have no friends and no money, and I can do nothing without it, as everybody is against me." He said he could do nothing against Richardson without money. The next evidence I shall call your attention to is that of Mr. Bowen, the blind preacher, and how strongly does it speak as to the condition of this unfortunate man, when it could be appreciated by a man without eyes! Mr. Bowen knew him in Newark in 1842, when he was a harnessmaker; and he told you how McFarland employed his leisure hours in study. He met him afterwards, in Boston, in 1867, during the pendency of the *habeas corpus* proceedings, and he says: "I noticed a peculiarity in his voice that I had frequently noticed in persons in insane asylums." Then we have the evidence of Mr. Isaac E. Clark, one of the firm of Sanford & Le Barron. He testified that such was the state of McFarland's mind, they did not dare let the judge in Massachusetts see him, for fear both children would be kept from him. It was under the apprehension of that danger a compromise was made, and this wicked woman secured the younger child, and he was allowed to retain only the elder. In fact, time will not allow me to go over all the pointed testimony adduced here to show the insane condition of this man's mind. We have produced forty-one lay witnesses and three medical experts for that purpose—forty-four witnesses in all. Almost four juries, more than three full juries—have taken their oaths in this case that this man is not responsible for his deed.

Let me, for an instant, gentlemen of the jury, refer to the medical testimony adduced for the defense. We have examined Dr. Hammond, Dr. Parsons, and Dr. Vance—three of the most distinguished men, in their own peculiar line, in this country. Dr. Hammond is, I understand, considered to be at the head of this department in this country. I have conversed with medical gentlemen on the subject, and they concur in according him that standing. He and Dr. Vance were witnesses against Reynolds, who was recently executed in this city, and but for their testimony he would have escaped the gallows. They both pronounced against the insanity of Chambers, who was lately tried at a court of oyer and terminer, held in Brooklyn, and acquitted as insane, although Dr. Vance alone gave evidence, as a witness, for the prosecution. It has been proclaimed, since that acquittal, that Chambers, in a glorying spirit, boasted that he managed to humbug every physician but Dr. Vance. Whether Dr. Hammond and Dr. Vance are right or not in the testimony they have given as to Mr. McFarland's mental condition, it is clear, from what I have stated, that they are not the men to say what they do not fully believe, and that when they say a man is insane, they are worthy of credit, because, though they were contradicted in the two instances to which I have referred by the judgments of other medical men, events proved that they were right. As to Dr. Parsons, I may state to the jury that he is at the head of one of our public institutions, and one of the most expert alienists in the land. The testimony of Dr. Hammond is substantially this: The ailments of Mr. McFarland had produced violent congestion of the brain, and when the brain is in that condition, it is only necessary for some powerful and sudden emotion, related to the main cause, to act upon the congestion, to precipitate an individual into some such act as is charged against the prisoner at the bar. His evidence was, that when the prisoner's brain was in that condition—Richardson having been the cause of all his wrongs and sufferings—the very sight of him would be all that was needed to make him perfectly insane, and betray him into the act which he then and there performed.

Dr. Hammond says that normal persons obey the intellect—that is, act upon reflection. There you find reason, memory, judgment—the analyzing and deciding powers of the mind. There are four departments to the mind—the perceptions, the intellect, the emotions and the will. A man may be partially deranged, in the derangement of any one of these functions of the mind. If a man is deranged in his volition or will, he is as truly unaccountable for

the act performed under that impulse, as if he was completely and radically deranged. Insanity has been defined to be, for the purposes of this trial, an organic disease, destroying freedom of mind and action.

As to the threats which Mr. McFarland is said to have uttered against Richardson, we have had forty-one witnesses upon the stand for the defense, who have spoken of his violent manner, for more than two years past, in alluding to his domestic troubles; but not one of them testified to ever having heard him utter a single threat against the libertine. I want you here to take notice that not one of those witnesses heard him utter such a threat. Still, a handful of witnesses are brought here for the prosecution to state that during this period he uttered the most atrocious threats against the deceased. The best evidence against that testimony is the fact that no account of these threats reached Richardson himself, nor was there any complaint made at a police office in consequence of them. Sinclair testified to a threat—but it was a conditional one—in regard to and dependent upon Richardson's marriage with his wife; and the man Howell, who testified in regard to other threats, stands stamped before you as utterly unworthy of belief. We have proved to you, by the evidence of two respectable witnesses, that he is so perfectly infamous as to be utterly unworthy of credit!

In a few moments, gentlemen of the jury, I expect to conclude, You must have been satisfied, from certain suggestions made by the counsel for the prosecution in questions put by them to the different witnesses called on the part of the defense, that some person was prompting them, and communicating to them facts that could only be known by two persons, or that would only be likely to be known by two persons—the prisoner at the bar and his wife. If you will pass over other incidents of this trial, in your memory, you will unquestionably be convinced that the private counsel for the prosecution has been directly or indirectly in conference or communication with Mrs. McFarland, in order that he might have a cue for the examination of the witnesses for the defense. What more horrible thing! That this wife, in addition to what she has already done, should nevertheless try to saddle upon this husband and father the cruel fate designed to be the goal at which this prosecution is to arrive.

I have had to hurry, gentlemen of the jury, through the latter portion of my remarks. I will rely upon your recollection of the evidence. I have sufficiently refreshed it in many particulars to enable you to supply such deficiencies as may exist in that part of

my performance, and, in fact, to supply such deficiencies as may exist in the whole of my performance. I know that you are overcome by the length of time I have addressed you. I am satisfied the court is worn out; and I know that I almost begin, physically, to sink under the ordeal through which I have passed.

I have been greatly assisted by my noble professional brother (Mr. Gerry) in this case. He and I had the honor to be associated on a previous occasion, when our labors were great, but in this instance they have been much greater than they were on that occasion. I feel under the greatest obligations to him for his aid, and it would be doing the greatest injustice to him were I not to state publicly how much of his time and talent he has spent in the preparation of this defense. Certainly, no case ever tried in this country has taken more labor in its defense than this one; and, however much credit has been given to me, it is but due to the cause of truth to say of many of my performances that the credit of them, at least, should have fallen almost exclusively upon the shoulders of my learned associate. For months sacrificing interests beyond conception, he has clung to this case with an ardor I have never known to be equalled by any counsel with whom I have had the privilege of being associated. If, in passing from the sphere of my duty on this occasion, I have gained always the same gratification for him he has gained for me, my satisfaction will be beyond all measure.

The position you occupy, gentlemen of the jury, is a proud one. Little did you think, when this event first happened, that you would be called upon to assume the responsibilities of such an occasion. Meet them like husbands—fathers—men. The highest interests of society are involved in this proceeding. Beware how you announce that the desecration of the marriage relation creates no other emotion in a manly bosom than that of mere passion or revenge. By all the considerations which hallow it in your eyes, do not thus lightly estimate it.

A home in ruins! How distressing the desolation! All sublunary happiness is short-lived, at the best. That of the family circle is not exempt. One by one its members may be summoned to other spheres—to take part in other cares—to put on other relations. Death may enter its portal, and receive from its number its victims. In all this there is pain, but grief is endurable in any form but that of dishonor.

Domus amica, domus optima—Home is home, though never so homely. The best home for us is that which receives us with the warmest heart, and welcomes us with the most cordial hand. *Intra*

paternos parietes—within the walls of the family mansion. How happy, how joyous are these words! At their mention does not the memory revert, involuntarily, to the abode of our early days, where, gathered around the family fireside, in the interchange and correspondence of love and affection, father, mother, brothers and sisters constituted a little community in themselves. Who, if we could, would not be a child again?

To you are committed these sacred interests. Upon you are rivetted the eyes of an anxious public. You are here to reflect in your action the value you place upon your own hearths, and the affection with which you regard your own firesides. When you return to them from this place, may it be to bear to them the gladdening tidings that they cannot be desecrated, with impunity, by the tread of the adulterer. Let those helpless innocents, who lean upon you, feel that they are still safe—that they still enjoy security.

The purity of woman is not to be questioned. Her virtue is a tower of strength. It has ever proved itself able to withstand the strongest and most persistent assaults. Still are we not taught daily to pray that we may not fall into temptation? In her appropriate and exclusive department may she ever illustrate her scriptural portraiture—and may it ever be the highest ambition of every wife and mother to have it said of her, that "she perceiveth that her merchandise is good; her candle goeth not out by night"—that "she openeth her mouth with wisdom; and in her tongue is the law of kindness"—that "she looketh well to the ways of her household, and eateth not the bread of idleness"—that "her children rise up, and call her blessed; her husband also, and he praiseth her"—and that "her husband is known in the gates, when he sitteth among the elders of the land." Let those who dare dishonor the husband and the father—who wickedly presume to sap the foundations of his happiness—be admonished, in good season, of the perilousness of the work in which they are engaged. As the result of your deliberations, may they realize and acknowledge the never-failing justice of the divine edict, that jealousy is the rage of a man—and that he *will not, can not, must not*, spare in the day of his vengeance.

Acquitted, and counsel heartily congratulated.

THE NEWLAND-EVANS HOMICIDE.

Trial at New Albany, Ind., May, 1866.

HISTORY OF THE HOMICIDE.

In the town of Bedford, Indiana, there were living, in the month of February, 1866, two men who were extensively known throughout the state of Indiana. One of them was Dr. Benjamin Newland, the other Prof. Madison Evans. Both were men of conspicuous ability, and each was the head of a family. The former was by several years the senior of the latter; and the ages of their children bore relation to their own. The professor was a teacher and a minister of the gospel in the Christian church of the town; and the doctor's family were members of his congregation, and some of them of the church. The eldest of his children, a daughter, well educated, brilliant, and good looking, had been away from home at a boarding school near Terre Haute; and returned upon the evening of the homicide out of which grew the trial in the course of which the following speech was delivered. The facts developed in the trial were voluminous, and, in some important particulars, conflicting; but in sum made the following case:

Dr. Newland left his house in the fore part of the night of March 5th, 1866, and before the people had retired; and repaired to his office, where he armed himself with a revolver and catling from his amputating case; and proceeded at once to the residence of Prof Evans. The knife was rolled in brown paper; the pistol not visible. When he arrived there, the room near the side door was lighted, and he passed to the front door, where there was no light visible. Here he knocked; and Mrs. Evans came with light in her hand and opened the door. She was then in a delicate condition. The doctor, who had doubtless expected to meet and kill the professor the moment the door opened, had to change his plan from action to inquiry. He accordingly asked: "Is Mr. Evans at home?" She told him that he was not; but had gone into town to correct the proofs of a speech he had delivered a short time before, and which was being published in the county paper. After some further conversation, Mrs. Evans asked the doctor whether he had business with Mr. Evans. He answered, "Yes, madam; I have business with him." The whole interview was brief: and, at the time, excited no suspicion in the mind of the wife that the doctor intended any harm to her husband. After the homicide, however,

she did, indeed, think that there was something bodeful of evil purpose in the manner in which he emphasized the words, "I *have business* with him." But this was not marked at the time; and he returned towards the town, and she to her room.

There lay between the town and the professor's house a deep hollow, which required the doctor to go down one hill and up another. He was heard to pass down the hill with rapid strides and loud breathing. He had passed the rill that ran between the hills, and reached the fence on his left that bounded the road leading up to the town, when he heard some person coming down the hill on his own side of the road. He stopped at the corner of the field and called out: "Who comes there?" He was answered, "Evans." He said to Evans, before shooting, "Do you know my daughter Helen? You have seduced her, and I intend to kill you." And telling a friend, the next day, how it proceeded, he said: "I then shot Evans, and he did not afterwards rise. He begged me not to kill him, but I told him I intended to kill him." The wounds of the deceased were numerous and of the most horrible and deadly character. The evidence left no doubt that the doctor was the perpetrator of the homicide. Indeed, it was not denied.

The defense was insanity. It was attempted to be proved that at an early period of his life, the defendant had suffered mental aberration; and threatened to commit suicide. But it was shown that that condition had resulted from a chronic disease of the liver, of which he had recovered. All the other evidence tending to prove the defense, consisted in the daughter's statement that the deceased had seduced her several years before, when she was not more than fourteen years old, and kept up a criminal intimacy with her ever since; that she was at the time of the homicide pregnant by him; and that he had never, down to the moment of her confession to her father, offered her any assistance. This confession was made to her father, the defendant, on the evening of the homicide; and just before he went out from home, to kill Evans. From home he went to the office of Judge Carlton; and, finding it full of people and the judge not in, he waited for him on the sidewalk, conversing about agriculture until he came. They then went by themselves to the doctor's office, and held a long conversation touching the seduction of his daughter, and his disposition to kill her seducer. Having given him some wholesome advice, the judge left him, promising to send his brother James to him. The speech, it is believed, sufficiently reveals both the state of his mind, and the cause of the tragedy, from this point to the close; and the further statement of the facts are therefore omitted here.

The case was transferred from the Lawrence circuit court at Bedford, to the Floyd circuit court, at New Albany. This change itself was so greatly detrimental to the cause of the prosecution that but little hope of a conviction was entertained after it was taken. At New Albany the defendant had the advantage of very wealthy and influential relations, which he would not so fully have enjoyed at the scene of the homicide. The trial was set for May 6, 1866; and, both parties being ready, it proceeded forthwith. The evidence closed upon the tenth, and the argument on the fourteenth of May. The speech of Major Gordon, for the prosecution, was delivered May 12, 1866. It was never well reported, there being no short-hand reporter at the trial; but the substance of the argument was published at the time in the *Commercial*, and, with slight and unimportant changes, is as it is here given.

The defendant was acquitted, not because he was believed to have been insane at the time, but because the jury regarded him as so wronged in his paternal rights and affections by the deceased, that he had a right, by an older and higher law than that of the land, to kill the seducer of his daughter. Aud yet the course of the evidence in the case renders such views of justice absurd in the extreme. Thus, the daughter was permitted to tell the jury the story that she had told her father, touching her seduction, but all inquiry in regard to its truth, was cut off, on the ground that it was of no material importance whether it was true or false—the real question being: "Did she tell it to her father; and did he believe it; and did it thus become the cause of insanity in him?" And so, no evidence to impeach her was allowed; and no question was permitted to be made whether she was seduced by the deceased, or by some one else. Of course, fair play would have denied the defendant the benefit of an argument founded upon the assumed truth of the story of her downfall. But this was not denied; and his counsel throughout justified the homicide on the ground of his injuries, under cover of a defense that, if true, could only have excused it on the ground of his incapacity to do an act that had any element in it that was either justifiable or culpable. The charge of the court was exceedingly conservative, leaving with the jury their constitutional "right to determine the law and the evidence."

As the case is developed through the graphic and ingenious argument of Maj. J. W. Gordon, a celebrated advocate of Indianapolis, a few words may be added on his manner of trying cases. He is now about sixty, in the full possession of his vigor and determined manner, his peculiar skill and thorough analysis of

human actions. His forte is in trying fraud and criminal cases, appearing generally for the defense. He has a singular art of getting error enough to reverse a case three or four times, and wearing out his adversary, if possible. In the famous Clem case, five trials were secured, largely through his influence.

After a careful selection of his jury, he addressses one man at a time, like Choate, gradually passing to every one on the panel, with a joke, story, illustration, or reason peculiar to his trade or employment. His closing appeals are graphic and convincing.

In this trial we find many touching and beautiful passages, in apt and suggestive language, such as, "I stand for the law, that will survive when we have perished and passed away; that is related to each of us, and defines the rights we shall enjoy, ere we are aware, or have passed the gates of life. It graciously meets us with friendly arms, leads us forward with paternal hands, teaches and trains us for our duties to others, goes with us through every stage of our earthly being, defends our graves from desecration, and our dust and ashes till the coming of the resurrection, and thus makes so sacred our final repose that the sweet rose planted by the hand of affection, or the wild flower blooming over our final rest, shall not be destroyed by the ruthless hand."

A counsel once used this picture, which I give from memory, showing a separate point for a separate juror. It is both a vivid and exciting word-painting, and resembles Mr. Gordon's style.

"I can see men on this jury who remember that sultry Sunday morning when we were tired and had slept late, when the enemy came upon us like a whirlwind, scattering fear and panic in his course, while our half-dressed company hurried to their saddles and saw a plain man, riding at a rapid gallop, on a big, black horse, along the lines, sending one man to the right, one to the left, one on one message, one on another, and before we could think, they were all in their places, when the command rang out on the clear morning air, 'Charge!' and we wheeled into line, and with a desperate struggle, turned back the enemy that in a quarter hour would have driven all in the river! There was no rest for any one that day. All day long we fought in smoke and dust, without relief or rations; and late in the afternoon I saw the man in slouch hat and dusty blouse galloping again up a hill, and raising his hat in mid-air, he said, '*Charge!* double-quick! Charge!' and we charged, and won! And when I looked up into that plain, strong face, on beard begrimed with sand and smoke, and saw his beaming eyes full of satisfaction at the work we had accomplished, I said, '*That is the handsomest face I ever saw!*' That was Grant

at Shiloh. My boy was in that battle, was shot, went down to an early grave. Had he lived he would have been nearly the size and age of this boy (the one he was defending), and ever since that awful day we have set the vacant chair and placed the plate at the table, but we shall see him no more, till the great day hereafter. Though we mourn that loss and feel for our boy, how would such a death compare with a death in prison? Ah, gentlemen, death is never so terrible as dishonor. It is an awful death to be buried alive in prison walls! to walk the narrow halls and beg for liberty, saying, 'O, how sweet the air smells outside to-day; I never knew the sunlight was so good before!' Yet this is prison life, and prison death! Can you comprehend it? Can you understand it? You that think the weeks are long, while you serve your state and stay away from home! You that long to see your flocks, your family, and even your favorite dogs, and count the days till you shall be free to go and gather up your little boys and girls! Think of it, men! Think of a hundred weeks, two hundred, three hundred, *a thousand weeks, and no relief!* Shut out from light! Shut out from home! That is a prisoner's fate. Such is a prisoner's home. * * May the good angel of mercy keep your child and mine, and this poor boy—who is after all, somebody's boy—from such a dreadful death!"

The surprise is all the more touching, as it comes in a way to convince and persuade a jury.

Speech of Major Gordon, of Indianapolis.

May it Please the Court:

Gentlemen of the Jury—I fully agree with Mr. Davis in regard to the importance of this case. In every respect it is an important case. The interests staked upon your verdict, whether we regard it as affecting the defendant or the public, are immense. On the one hand, all the defendant is, or has, or hopes, hangs upon your verdict; and, on the other, the just administration of the laws, the safety and sacredness of human life, the maintenance of social order, and the prevention and punishment of murder—the highest interests, and, indeed, the indispensable principles and conditions of society and life. It is impossible to exaggerate the importance of this case.

Some things have been said by my brother Davis, which I should have been glad if he had omitted. I do not attribute any personal or improper motive for saying them; but, uttered without the qualifications which I am sure he must have intended, and without

which they would be both personal and insulting to all of us who differ with him in our views of the case—the guilt or innocence of the defendant—they deserve a passing notice. I shall give them that notice, therefore, which I think they deserve, before entering upon the discussion of the case on trial. I regard them as straw, or chaff, or dust, thrown into the case, by the gentleman, for the purpose of distracting your attention, confusing your minds, and so rendering them incapable of the right apprehension of the real questions involved in this trial, and of rendering a fair and just verdict upon them.

In the first place, he has assailed some of the state's witnesses, because they have contributed money to carry on this prosecution; and has lavished upon them abuse that implies that, by so doing, they have violated some duty imposed by law, or made obligatory by custom or morals. Is it so, indeed? Shall the citizens be told by the ministers of justice, in the presence of our courts and juries, and of the public at large, that, no matter what atrocity may hereafter be committed, no matter how poor and weak the friends of the victim may be, no matter how public sentiment, and law, and humanity may be outraged, he must not, under pain of forfeiting his character as a fair and honorable man, as a true witness and good citizen, open his purse, or raise his voice or his hand to bring the malefactor to trial and justice? If this be so, our witnesses are before the court, whose duty it is to repress such offenses by inflicting due punishment upon each offender, and to that end it has full authority. But I aver that they have not offended by so doing. They have but done their simple duty. Had they done less, they would have forfeited their character as good and public spirited citizens. It is the duty of all men who live in society to use all just means to prevent its laws from being violated in the first instance; and when they are violated, to bring home to the violator the penalties which they have prescribed. Those whom the gentleman has so cruelly assailed have been guilty of no other fault but what is thus imposed upon all as a duty. Instead of meriting censure, they deserve approbation and praise. Instead of forfeiting your confidence as good and true men, they have thus given you a new and weighty pledge that they are worthy of it. But the gentleman did not stop with his assault upon our witnesses and others who supported this prosecution. He could not allow us, who have accepted a place in the prosecution, to pass without censure. After telling you, with his accustomed modesty and manners, that "no honest man can say that Dr. Newland has committed any crime," a dozen or more times, he went on to say, by impli-

cation, at least, if not in direct terms, that, in his opinion, it was wrong in us to accept a fee to prosecute any man arraigned for murder. He even told you that he had never done so; and referred triumphantly to the example of the very justly celebrated John Rowan, of Kentucky, as the standard of professional ethics upon the subject. I always admired John Rowan, while he lived, and find no fault with his views of duty, in regard to prosecuting men charged with crime. If he thought it was wrong for him to do so, then he was right not to do it. Every man must in matters indifferent in law choose his own cause, and determine what he will and what he will not do. But this leaves me equally free to choose mine. And this I have done hitherto, and shall hereafter do, with reference to my own convictions of right and duty. As for the learned gentleman, I know not what may have been the motives that determined his course. He may never have been offered a fee to prosecute any one; or he may have declined it, because it was not satisfactory in amount; or from other motives of expediency. He has not told us what sacrifices he had made; and until we know, the facts that have shaped his career, his practice, and what he has revealed concerning it, are worthy very little consideration as furnishing an example worthy of imitation by our profession. I appeal to the court to say whether it is wrong for an attorney to accept an employment to prosecute a person charged with crime? I am a sworn officer of this court—sworn to discharge my duties faithfully and to the best of my abilities. Have I violated my oath? Have I failed in the performance of my duties, by accepting this employment and the part I have taken in this prosecution? If so, I am amenable to censure and to punishment. Your honor sits here to see that we do not violate the law, by any public omission of duty, or commission of wrong. My action, my whole conduct in, and connection with, this prosecution has been open, public and known to the court. If I have committed any wrong which any gentleman has any right to refer to or criticize here, that wrong is equally known to your honor, as it is to him; and I now demand, for that wrong, the censure and punishment at your hands which my offense deserves. It is your right, it is your duty, to inflict them. I pause for your judgment.

The COURT—Major Gordon, you know you have done nothing wrong. Go on.

I have, then, done no wrong. I am subject to no censure from the court. By what right, then, does the gentleman presume to question my conduct? With what propriety does he even allude

to it? It is out of the case; and should be left out of all consideration in its discussion and decision. It has been dragged into it for no lawful purpose; and to any man less kindly disposed than myself, would be regarded as offensive. What right has he to censure what "the law allows and the court awards" to me as a right? He is my senior in years, and as such I respect and honor him; but in my official relations and duties here I am his peer, and deny his right to censure me for choosing the duty that I shall perform, or the manner in which I shall see proper to perform it.

[Here Mr. Davis apologized for what he had said, and disavowed all intention to be offensive.]

Gentlemen, we live in a land of law. Our law is the express will of the people. It is enforced by the government, which is the agent, the creature of the people—in other words, the people organized. But what is the law, the will of the people, which is the only sovereign we obey? Where does it abide, and what does it do? It is the body of principles and rules, which the people have adopted and enacted for the establishment of rights, and the prevention, redress and punishment of wrongs. It is everywhere, like the atmosphere which we breathe. It is the vital air, in which all rights live, and it is mortal to all wrongs and crimes. It is full of life and power to preserve life, and to make it safe and sweet—to prevent all crimes against it before they are committed, and to punish them after they have been accomplished. It is the law that protects all in all places; and pursues him who violates it to the injury of others, to avenge them. It teaches all to avoid collisions and harm on the highways, by admonishing each "to keep to the right." It is so common, so universal, so essential, that, grown used to it, it is only in its violations, and the retributions with which it follows them, that we realize its presence, at least, in so far as our natural rights and duties are concerned. Here, in this court, it is visible in its officers, the agents through whom its author, the People, have chosen, to give it practical expression, application and enforcement. It has brought us together from different parts of the state, and made us, for the time being, joint laborers in applying its general principles and rules to the particular case, in the trial of which we are engaged. It is represented in his honor upon the bench, in each of you, and in the counsel engaged on both sides. Nor is it inconsistent with itself in the duties which even we sustain to it, or to the part we perform in the trial. On the contrary, if we be faithful and fair in the conflict of opinion and discussion to which we are here called, our

labors will tend to lighten yours, and so make it easier for you to reach a right verdict.

The law was before us all, and will survive, when we shall have passed away. It ante-dates all existing societies, and will remain when they shall have given place to new forms. It is related to each of us before we know that it exists; and defines beforehand the rights that we shall enjoy and the duties that we shall perform. It looks forward with prophetic vision and paternal solicitude, and provides for our safety and well-being, before we have passed the gates of life. It graciously meets us at our coming, and folds our naked and helpless infancy in its protecting and motherly arms. It recognizes our rights, and shields them from invasion or harm, long ere we have any knowledge of their existence, or any power to defend them. It leads us forward, supporting our tottering steps, until the first duty is laid upon our shoulders. This it imposes with due regard for our weakness, and with a gentle hand. It teaches and trains us in each stage of our being for the duties of that which lies next before us. In a word, it goes with us through every stage of our lives, from the cradle to the coffin, and when we are buried defends our graves from desecration, and our poor dust and ashes from outrage and insult. And so it makes sacred the place of our final repose until the morning of the resurrection. It will not allow even the rose, that the hand of love may plant, or the wild flower that may bloom there, to be touched or destroyed by any ruthless hand.

The law grows out of the great and generous heart of the People. It is framed and adapted to their wants by the common mind. It is their will, expressed in the manner and form which the constitution has imposed for their security against oppression from whatever quarter. It must, therefore, rely upon the People—the order-loving, law-abiding—to keep it strong and steadfast, against the disorderly and the disobedient who strive to destroy it, and to abolish the social order and personal safety and happiness it was ordained to establish and maintain among men. He who violates it, finds his offense measured and its punishment prescribed; and society, and its creature, the State, and all who exercise its functions, must abandon their duties, and set at naught the principles upon which social order depends for its existence, before they can allow the guilty, on the one hand, to escape without that punishment, or before they can, on the other, allow it to be inflicted on the innocent.

I stand before you to-day for the law. I stand against those, and those only, who have broken it, and who ask you to break it.

I stand opposed to force and brute violence, and ask that the law may be enforced for their suppression and punishment; for upon the law and its faithful enforcement depend all the interests of the people—of the individual and community at large. If we abandon the law, we shall find ourselves at once adrift upon the great ocean of chance and uncertainty, driven by the winds and the waves of individual passion and interest against each other; and, like the miserable victims of shipwreck, sinking each other into the soundless depths of wretchedness and woe. We must not, therefore, abandon the law. It is the ark of safety to us all. Without it, life itself is a negative birthright. But here, in our present relations, we have no existence apart from the law. As judges, lawyers and jurors, we are its creatures. It is to us the breath of life. It is our creator, and has exacted from each a solemn oath of allegiance. We have taken that oath; and each of us stands bound by it, not only not to violate, but to maintain and enforce it; and this all must do, let it crush whom it may crush, or save whom it may save. I only ask you to perform your vows, when I entreat you to stand strongly up for the law. It is our only bulwark against the return of brute violence and barbarism. Let us see to it that it is kept strong and steadfast to-day; that it may so abide to-morrow, and forever.

Seduction and murder stand alike, branded by the law—the will of the people—your will—the will of us all—as it has been written for our direction in respect to wrongs to be avoided ; and, when committed, to be punished. According to our law, there are two kinds of seductions : one criminal and punishable as a felony, the other a mere private wrong to be compensated in damages. Where seduction has been accomplished by an unmarried man, under promise of marriage made to an unmarried woman, under the age of twenty-one years, and who was at the time of good character for chastity, the law punishes it as a crime ; but it is so careful of the rights of the defendant, even in this case, that no prosecution can be maintained unless the woman's testimony is corroborated by that of other witnesses. But when, on the other hand, the seduction has been accomplished without a promise of marriage, whether by a married or an unmarried man, the law allows no criminal prosecution. It only gives the parent of the girl or the girl herself, an action for the damages resulting from the seduction.

It is no part of my duty to-day to discuss the question whether the law upon this subject is right or wrong, nor of yours to consider it. That the law is so written is the only fact with which

his honor, or you, or I, have anything to do in our present relations. If it has been unwisely so written, it must be corrected by the legislature. In the meantime we must obey it, or involve ourselves in the sin of disobedience. It is ours to enforce, not to make the law. In our capacity as citizens we may change it, if it displease us. In that case we can elect senators and representatives, and send them to the general assembly with instructions to amend it. Until that can be done, however, let the law be honored, obeyed, and maintained by its ministers and the people, that so the principle upon which alone a government of law is possible among men, may be preserved. But let us not, so long as we need the protection of government, abandon the only ground upon which it can stand, either by acts of personal violence, or by lawless decisions of lawfully constituted courts. Both of these methods are evil; but the last is far worse than the first; for it murders the law in the name of the law, and tends to bring our social and political institutions to utter ruin.

Murder too is a crime—a high crime—next to the highest known to the law. Upon proof of the fact against any citizen, before a proper tribunal, he is subject to be punished with death, or imprisonment during his natural life. This is our law; and, if such a case is now before you, for judgment, the duty of enforcing it is upon you, and you ought not to strive to avoid it. I do not think you will.

Let me say, again, if the law of murder be wrong, let us send up our representatives to the general assembly and amend it; for, until it is amended, it is right for us, both as its subjects and ministers; and everything else that may tempt us to break it is wrong, let it come from whatever quarter it may come. Since it is right, and because it is right, let us stand by and uphold it to-day, and so long as it shall remain the law. We are sworn to stand by it. Shall we break our oaths, and so far as in us lies, abolish society and government; because they do not enable us to do what might be agreeable to our feelings, if it permitted? But we have espoused our obligations to the law, and, by doing so, have said that, in our judgment the law is right. We have thus pledged ourselves, solemnly, before all the people, and before Him who is the Sovereign and Master of all peoples, that we will stand by and enforce the law.

Shall we allow the father or brother of her who may have been seduced to kill him whom she denounces to him as the seducer? The law declares such a homicide to be murder. Shall the slayer go unwhipped of justice, when the law declares that he shall die?

It vitiates all principle, for it sets up the injured one as judge in his own case. It receives evidence without oath, in the absence of the accused, and decides the case without hearing both sides. It sets up a rule that never can be equal in its application to all cases of equal injury. If it be allowed, where shall the poor, lone and unfriended orphan find her judge and avenger, when her unguarded feet have been misled by the wiles of the seducer, and she has fallen, never to rise again? Alas! she has no father, no brother, no avenger. And so you would establish one measure of justice for those who have friends, and another for those who are friendless. You destroy the equality of the law before the people, and the equality of the people before the law; and annihilate at one blow both the law and the state, whose organ it is. You do more; you root up the only principle upon which it is popular for a free popular government to stand. Are you willing thus to destroy our free institutions? Are you willing to obliterate every trace of that equality among the people which gives them their chief value? Is this labor of destruction, the defense has invited you? Is this wicked work, my brother Davis has persuaded you! Suppose you shall do the thing they ask at your hands, will you put an end thereby to seduction, or murder? Suppose you shall say that, although seduction with bastardy, and without promise of marriage, is no crime, not even a misdemeanor—only the ground of a civil action for damages—yet you will allow it to be punished by the father of her who has been seduced, with death, can you afterwards, with any show of reason or justice, deny the son of the slaughtered man the right to kill the slayer? If so, upon what distinction? In the case of the seducer, no crime has been committed; in that of the slayer murder has been done. Shall you allow murder in lieu of a civil action for a civil wrong, and deny it in lieu of a criminal prosecution for one of the highest crimes known to the law? If so, where shall the matter end? But suppose you grant to the son of the murdered man, when he shall have arrived at man's estate, the right to kill him who slew his sire, can you deny to the son of this second victim of the system you are urged to inaugurate to-day, the right to destroy, in like manner, the murderer of his father? Do you not see that such a system leads to an endless series of murders? Do you not see that the function of the law must be abolished by the new principle that has been invoked in this case; and that wherever and whenever it may be adopted, the people must revert at once to a state of savage individualism, in which each will depend upon himself for all the rights he enjoys, and become the avenger of all the wrongs he may

suffer? The result of the adoption of such a principle may be foreseen by any one who can add two and two together. There is nothing more simple—no sequence more evident.

Homicide has several grades. It is either justifiable, excusable or felonious. It is not contended here that the homicide proved to have been committed by the defendant is justifiable. The defense rests upon the assumption that it is excusable, because he was insane when he perpetrated it. If this is true, he is excusable; for the moral quality upon which alone a homicide can be either justifiable or felonious, does not pertain to the violence of a madman. He is excusable because he has no moral quality, and can impart none to his actions. A homicide, however atrocious it may appear at first blush, ought to provoke no resentment in the breast of an intelligent man, or just state, when it is found to have sprung from the necessity of disease. But the prosecution is not convinced that the horrible homicide now under consideration, can be so excused. Indeed, we are satisfied that it is not only not so excusable, but is in fact a felonious homicide, darkened by every shade of malevolence essential to constitute a murder in the first degree. Our law thus defines such a murder: "Every person of sound mind who shall purposely and with premeditated malice kill any human being shall be guilty of murder in the first degree." We think that all the elements essential to this definition have been proved beyond a reasonable doubt to have entered into the killing of Madison Evans by the defendant. On the part of the defendant, it is urged that, upon the whole evidence, there is at least a reasonable doubt whether the defendant, at the moment of the homicide, was of sound mind. If we are right, he must be convicted. If his learned counsel are right, he must be acquitted. The whole ground of contest lies here exposed to view; and it is so plain that "the wayfaring man, though a fool, need not err therein." I do not, therefore, propose to go into a discussion of the law of homicide. It is not involved in the case. I beg leave, however, to keep before you the definition of murder in the first degree. I ask you to remember that, "if any person of sound mind shall purposely and with premeditated malice slay another, the slayer will be guilty of murder in the first degree." Be careful to distinguish the elements of this crime. The slayer must be a person of sound mind. He must kill his victim. He must kill him purposely. He must kill him with premeditated malice. If these constituents enter into any act of homicide, he who does it is guilty of a murder of the darkest dye. It is really unnecessary to descend to the lower degree of murder; or to consider the law of manslaughter at all.

My argument must stand or fall upon the definition of murder in the first degree. Still, it may not be amiss before going into that argument to say that, murder in the second degree exists whenever a homicide may be truly characterized by all the elements of murder in the first degree, except premeditation. Manslaughter occurs wherever there is an unlawful killing of one human being by another, without malice. But it is unimportant to further consider in this case the subordinate grades of homicide, or even to glance at distinctions that lie below them and outside of the range of crime.

The defendant is charged with murder in the first degree. The fact of the crime is alleged to have taken place in Lawrence county, in the state of Indiana, on the fifth day of March, 1866. The means by which the deceased is alleged to have come to his death, are a pistol shot and several cuts and stabs with a knife. It will, therefore, be necessary, before the state can demand a conviction of the defendant, that the evidence shall satisfy you beyond a reasonable doubt:

First. That the defendant killed Madison Evans;

Second. That he killed him in Lawrence county, in the state of Indiana;

Third. That he killed him purposely;

Fourth. That he killed him with premeditated malice.

If these propositions are proved beyond a reasonable doubt, then you must find the prisoner guilty. Are they so proved?

It is proved, I think, to the exclusion of all reasonable doubt, that the defendant killed Madison Evans, at the time and place, and with the means, described in the indictment. Indeed, the defense admits as much. There is no controversy thus far. From this proof alone the law implies malice, and the defendant, if nothing further is proved in the case, stands guilty before you of murder in the second degree. This much the law infers from the facts. Standing upon this inference, the law allows the state to aggravate the grade of the crime by showing that it was premeditated; and the defendant to mitigate it by disproving malice, or that it was not unlawful, because excusable, or justifiable. If premeditation be proved, the offense rises in point of guilt to murder in the first degree. If the fact of malice be disproved it descends to manslaughter. If unlawfulness is excluded, the act passes out of the dominion of crime altogether. Does the evidence mitigate or aggravate the grade of the crime which the law infers from the fact of the homicide? To this question I invite your attention.

I am persuaded that the evidence shows the act to have been

deliberate. It proves premeditation. The defendant deliberately selected the deadly weapon with which he committed the homicide. His determination to kill the deceased is proved by his declaration to Judge Carlton, more than half an hour before the fatal act, that "that infernal Evans and I cannot live in the same world together;" by the connection he gives the homicide with an adequate existing cause for malice and revenge, namely: the seduction of his daughter; by his going more than half a mile in search of the deceased, armed to kill him; by his inquiries concerning him at his own door; and, after learning that he was in town, by his declaration that he would see him there; and by what took place at the scene of the homicide, after he had learned that deceased was there. It was there that he asked the deceased the question: "Do you know my daughter Helen?" and followed it, without waiting for an answer, with the declaration: "I intend to kill you." It is still further supported by the fact that, when he had shot the deceased down in his tracks; and while he prayed him to spare his life, the defendant answered him: "No; I am determined to kill you." And last of all, it is established by his declaration to Glover: "I place the whole matter upon a point of honor." But go back to the moment when he knocked at the door of Evans. Does any one of you doubt that he expected to meet Evans there; or that his determination was then fixed to kill him, if he did? He had the fatal knife in his hand, concealed in the paper in which he had wrapped it. It would have been the instrument of death had Evans, instead of his wife, opened the door. If his malice was not premeditated, if he had not fully deliberated upon the homicide, how can you account for the calm and unimpassioned part he took in the conversation with the wife whom he intended, at the very moment of meeting her, to make a widow, by killing her husband upon the threshold on which she stood? The homicide was deliberately done with premeditated malice; and the defendant is guilty of murder in the first degree unless, upon the whole evidence, you shall have a reasonable doubt whether he was not of unsound mind when he committed the deed. Does the evidence leave a reasonable doubt of his having been, at that time, a person of sound mind?

I regard this as the only question involved in the case; and shall, therefore, by a fair analysis of the evidence bearing upon it, endeavor to satisfy you that so far from the evidence tending to such doubt, the admitted facts of the case, and even those relied on by the defense, are inconsistent with his guilt and exclude the doubt of his sanity.

Before entering upon this discussion, I invite your attention to the alleged cause of the defendant's insanity. It is said to have been the recital of his daughter's wrongs by herself the evening of her arrival at home from the boarding-school—the same evening of the homicide. It has been assumed throughout this trial, but, I think, without any reasonable grounds to support the assumption, that the fact of his daughter's seduction, the ruin of his child, the disgrace of his family, and the shame and sorrow incident thereto, caused his excitement and the overthrow of his reason, and that he must, therefore, be excused. It has been said, more than once in the course of this trial, that these considerations affecting the honor of his house, were quite sufficient cause for insanity on the part of a man so very sensitive to shame and dishonor as the defendant. But I am not persuaded that these facts are shown to have had any connection with his excitement—much less to have been in any degree the cause of it. On the contrary, I hold, and shall endeavor to prove, that we must either wholly disregard the evidence which the defendant himself has given, or attribute that excitement, or whatever else it may be styled, to a cause far less adequate to its production; and far less honorable to the defendant. What, then, was the real cause of the shock to his moral nature, which is alleged to have paralysed his will and destroyed his self-control? What was it that left him thus irresponsible for his action?

It was not, gentlemen, in my opinion, the slander of his daughter's reputation for chastity. Neither was it the belief that she had been seduced and ruined. He had known that two weeks before. Upon receiving the letter from Bishop Hill, informing him that something deeply concerning one that was near and dear to him, required his immediate presence in Terre Haute, he had gone thither upon that errand alone. He had gone upon that information, to the source whence the Bishop had derived the knowledge that led him to write that letter. He had even been informed of the condition of his daughter, by an anonymous letter. He thus knew all. True, it appears that he pretended not to believe the story thus told him; but he was told, at the same time, that the faculty of the school where she then was, believed it to be true. Whether he believed it or not, the evidence does not inform us. It was, at all events, sufficient to have let him know that all was not well with his daughter. It should have put him upon enquiry. Do you doubt that he knew it all? Did he not at least believe it? If he did not, how could he have gone home from Terre Haute, with the terrible uncertainty rending his soul, when

the means of learning all—whether the horrible story was true or false—were so immediately at hand? To doubt upon such a point, was more terrible than the most horrible certainty itself. How could he have gone home, doubting whether his darling daughter, whom he loved as the apple of his eye, as Judge Carlton has told you, was lost to herself, to her family, and to the world; or whether she was still to remain the pride of his eye and the darling of his heart? If he loved as is now pretended, and as I am not disposed to question, it is contrary to nature that he should have so acted, for

> "O, what damned moments tells he o'er,
> Who doubts, yet dotes, suspects, yet dearly loves."

He must have known that she had fallen, or he must have held her cheap in his affections, indeed. In her affliction, this horrible story did not, as we are now told, even induce him to see her, although he was in the same town where she was, upon business connected with her reputation. Surely he could not so have acted, while uncertain in regard to her downfall. Who that had the heart of a father could? But, if he knew that the story was true, his conduct is not at all inconsistent with the deepest paternal love. In that case, his own good sense would have told him that it would be better to avoid the scene that must have followed their meeting, until they could meet where no stranger's eye would witness their wretchedness and woe. He must have known it, therefore; and returned to his home satisfied of her downfall. If he did not know it, then he had no love for her, out of which the terrible sequel which we are investigating to-day could have come. I shall, therefore, as the most favorable and merciful conclusion to which the facts point, assume that he did know all; or, at least, that he did believe all that had been told him concerning his daughter. But mark the result. Did this belief produce any visible effect upon his manners, his conversation, or his life? No one beheld him returning from Terre Haute with all the marks of excitement and sorrow that would have been stamped upon his face, if the theory of the defense is the true one. No one saw him weeping about Bedford after his return, in consequence of his blighted hopes in his lost child. On the contrary, Dr. Smith, his own witness, informed you that he rode home with him from the country on the evening of his daughter's arrival, and that in a conversation lasting while they rode several miles together, he saw no change in his manner. He was the same Dr. Newland whom he had always found him to be. He saw no symptom of grief, shame, or insanity about him. It was just about dark when they came into town; and the evidence

shows that the first meeting between him and Helen took place immediately after his arrival. Before they met, his wife had told him at the gate that Helen was at home. The question which he then asked his wife, proves that he had already heard all about her condition; for, if he had not, it is without sense. That question was, "Is it true?" His wife informed him it was true. Take that question and answer, and reconcile them, if you can, with any other supposition than the one that I have already adopted, namely, that he had heard the whole story of his daughter's seduction and pregnancy when he was at Terre Haute; and that after his return from that city he and his wife had talked it all over between themselves, and understood it but too well. What antecedent can you find in all that took place between them at the gate for the pronoun "it," in the question of the father, or the answer of the mother of the ruined girl? There is none, unless you refer to their mutual knowledge of something that neither seemed to be able to utter in words. They each understood without words the hateful antecedent of "it," in the question, "Is it true?" That puts all beyond doubt. He had then borne the terrible secret of his daughter's ruin and shame, in his own heart, or shared only with the partner of his bosom, during the two weeks that immediately preceded the homicide; and no man, down to the last moment before meeting his daughter, had been able to see any change in his demeanor or appearance. It was not, then, the loss of his child and the shame of his family that drove him mad, if, indeed, he was mad. He was able to stand up against all that, and so bear himself that the world could behold no signal of the soul's distress in his form or features. This being so, we must look further for the cause of his subsequent excitement. From what followed, I am led to believe that its cause will not be found in the fact that Evans was even the seducer of the girl. Bad as that is assumed to be—and God knows, if it be true, it is bad enough—it was still not the climax of the seducer's wrong—not the real cause of his excitement, and alleged insanity. He had borne all that, and could have borne it still. We must go further, if we would reach the real cause of the terrible outburst of passion, insanity or crime that followed. I shall give you a solution of the difficulty before us in the defendant's own words. They were spoken in his own house the next morning after the homicide, to his friend, Dr. Raridan, and are as follows: "I asked Helen if Evans knew her condition? She said he did; and had written her a letter sympathizing with her. I asked her if he had ever offered her any assistance. She said he had not. Then fire went through my brain, and I determined to

kill him." Here, then, seems to be the explanation of the motive upon which he acted, or the cause of his insanity, if that shall better answer the condition of the case. He leaves us to infer what he may have meant by "assistance," but he leaves no room for inference that, if Evans had "offered her assistance," he might have been, to-day, a living monument of his sparing mercy. That much is certain. It is only necessary for us to inquire and find out if we can what he meant by "assistance." I have spent much thought upon the inquiry, and have been led by every effort reluctantly to the same ugly conclusion. It could not have been money that he meant; for she needed no such assistance. He, too, would have scorned to receive it from poor Evans, whose entire means would not have supported a single year. Even the offer, had he been both rich and generous, would have but added insult to injury. Dr. Newland was not the man to think of pecuniary assistance for his ruined girl. It was not that. Marriage was always out of the question. She knew that before she gave up to him the jewel which alone gave her life its value. It was true from the beginning. It remained true now, after the discovery at the close of their lawless love. A life stood between them. Marriage was not the assistance, therefore, to which he referred. What then was it? Was it concealment? It is said that such things may be concealed, and the world remain ignorant that they have ever been; because crime can shut the door in the face of discovery. Was it that? I blush to think so; but what else could it have been? Try, gentlemen, try for yourselves, to find any other "assistance" that could have been intended; and, if you can find it in all the facts of the case, in the name of mercy and humanity give the defendant the benefit of your discovery. To me that seems to have been all he meant—the sum of his thought, and the pivot on which his determination to kill Madison Evans was suspended. Had the question been answered in the affirmative, the result of the whole matter might have been different. But it was answered in the negative. Then, "fire went through my brain, and I determined to kill him." That was "the point of honor" upon which the matter was to rest in all after time; when Evans should sleep in the "eternal dumbness of the grave."

Alas, for poor human nature! It seems never to be able to raise itself up to the contemplation of true excellence and goodness. It seeks rather to follow the shadow, than to enjoy the substance—to possess the reputation than the character of virtue. Thus, forever, do the sad experiences of life overthrow and destroy the golden dreams of our boyhood, which, born of enthusiasm and

hope, made our existence glad, and sweet and beautiful as the garden of God. Not only do our experiences banish our dreams; they strike to dust the ideals which, for us, brightened and glorified so many pages of the world's history. Who has not glowed with admiration and reverence over the legend of the Roman Lucretia, so cruelly ravished by the infamous son of Tarquin? She was long the ideal of my soul of the true and noble woman; but, in the presence of the facts revealed to us to-day, in real life, I feel that I must give her up. She, too, was weak and frail as the rest. Like them she worshipped the shadow because it was cast upon the earth, while she did not even see the substance that lived above the reach of her groveling thoughts. Else why did she, to avoid the reputation of vice and crime after death, surrender herself at once to both and Sextus? Surely the true worshipper of virtue would have rather died uncontaminated, than to have survived its accomplishment in order to vindicate her name by an explanation that only told the world that not virtue, but its reputation, was the god of her idolatry. Why, what to her would have been the voice of the world, if she had bravely died to preserve her purity? The reputation, even of chastity, is too dearly bought by the sacrifice of the virtue itself; for after the barter it becomes a cloak and dupes the world with a lie. It is in such disguise that the brave Lucretia has duped mankind. She was too weak to do right, and leave consequences to take care of themselves. What right has she, then, even to the reputation of virtue, since she sold the character to buy it? And the defendant fell by the same weakness into the same wickedness. Under the word "assistance" lies the dark admission that it is not the crime, but the shame that follows discovery, that makes crime really hateful.

But suppose that the letter of sympathy and the failure to offer assistance drove the defendant to desperation. There can be found in the whole evidence nothing else. Tell me, then, what there is in these to give rise to such passion, or insanity, as is claimed to have existed in the defendant, when he had submitted quietly for weeks under the full knowledge of the ruin of his wretched child? And what, indeed, is there in all combined—both what he had learned at Terre Haute and at home—but a great, sufficient and just cause for anger, resentment and revenge toward the deceased? Surely nothing could be added to the story of his daughter's seduction, which he had borne without the least manifestation of excitement, or insanity, for two weeks, capable of driving so immutable a man at once to madness. But the doctors tell us that his eyes glared, shined and flamed, and that he rushed out of his house, tearing

himself loose from his daughter, who fell senseless upon the floor; and that, therefore, it is their opinion and judgment that he was mad. The cause of his madness, however, has been already ascertained and analyzed, and it has been shown that no argument can be deduced from it at all to show that his madness ever existed. It had no effect upon him for two weeks; for it will not be contended that if the fall of his daughter wrought no change upon him in the course of two weeks, that the discovery, at the end of that time, that the seducer had failed to offer her any "assistance," could have carried the defendant at a single bound into the dominion of insanity. Such a supposition is not reasonable, and I do not believe it is true. But that his eyes *glowed* and *flamed*, and he *rushed* violently out of the house, "determined to kill Madison Evans," constitute the entire sum of the symptoms of insanity that he manifested when he left home. The state of his eyes and his abrupt departure from the house are all that we know upon which to build the theory of his insanity at that time, except the alleged cause; and that has been shown to be wholly inadequate, and, in fact, ridiculous. His whole conduct during the two weeks that the pretended cause had been operating upon him contradicts the pretense that it was any cause at all. And now, without any sufficient cause, a single feature and a single act, each and both, equally expressive of anger as of insanity, must now be accepted as all-sufficient evidence that he was insane. Even that act and that feature are described to us by the fallen girl, the one witness in all the world likely to heighten every indication in her father that would shield him from the consequences of the horrible homicide he had committed in revenge of her real or imagined wrongs. Yet even her account of him is of no significance as proof of insanity. The condition and expression of the eye, since there was quite as much ground for anger as insanity, and it as fitly expressed the former as the latter, is without any significance whatever. It is, I know, an important feature in the diagnosis of insanity—often an index to the condition of the mind; but does the fact that "it glowed like fire" authorize us to conclude that he was therefore mad? The doctors do, indeed, say that he was mad when he left the house; and yet they have no other symptom than the gleam of the eye on which to build their conclusion. The poets and philosophers—the real leaders of thought and of men—stand opposed to the doctors here. From Homer, the father of Greek poetry and literature, all the great poets who have followed him, down to the last who has sung a strain worthy of his divine art, are opposed to our doctors. The blind old man of the Iliad describes one of his heroes as he

is forced to retire before his victorious foes, and does not fail to note that,

"His eyeballs glowed with living fire."

And Collins, too, the poet of the passions, whose immortal ode has a place in the literature of all languages, not merely for the beauty of its poetry, but for the truth of its description, thus introduces anger:

"Next anger rushed, his eyes on fire,"

giving us, in this single line a full description, in both respects, of the defendant at the moment he left his house; for "Newland rushed, his eyes on fire." And this is all there is in testimony tending to prove him insane. A description of anger, which science has long accepted, is thus found to apply literally to the condition of the defendant. And yet grave doctors rely upon these manifestations of anger as not merely evidence, but sufficient proof of his insanity!

I am here so fortunate as not to be under the necessity of wholly relying upon the poets to confound the doctors. Their own authorities—sworn to be such here in court by themselves—fully support the poets, and overthrow them. They have told you that Wharton & Stette's Medical Jurisprudence is a high authority for both their profession and ours; and I now quote it as fully supporting my argument and putting down their opinion.

[Here Mr. Gordon read a long quotation from the book referred to, beginning at page 103.]

Here, then, to-day we have the pupils against their masters—the doctors against their professors. On which shall we rely? Had the doctors not sworn to the book we might have failed to determine; but their testimony takes away all difficulty, and gives the book a fair preponderance against them. We are now at liberty to conclude that these gentlemen played truant when they were students; that they were idle boys, and neglected their lessons. But if the poets and professors be allowed only to balance the doctors, it is enough for our purpose. In that case, all difficulty is removed from our labor in respect to the question under consideration; for nothing is proved where the evidence on the two sides is equal. Hence the old distich is found to express the truth of the case in hand:

"When doctors disagree,
Disciples then are free."

Having no guide they are bound to respect or follow, how can it be otherwise? There is, then, no proof that the defendant was insane at his house or at the time of leaving it on the night of the homicide. He was merely angry; his anger had ripened into revenge, had led to the determination of killing the deceased.

While upon this point, it may not be amiss to observe that there is a great dissimilarity in the account given by the defendant himself to Dr. Raridan, of what took place between him and his daughter before he left home, and that given by the daughter in her testimony here, before you. The defendant said nothing about pushing his daughter from him, and rushing from the house. Yet he told Dr. Raridan that he was telling him all about the transaction. If he did tell him all about it, the daughter's story cannot be true. What are we to believe? I leave it with you to determine.

We next behold the defendant in front of Carlton's drug store. For what purpose had he gone there? His own declarations and all the circumstances prove that he went there to see his friend, Judge Carlton, for the purpose of pouring his griefs into his ear, and receiving his friendly consolations and advice. He remained there some time before Judge Carlton came to his office; and while there we are permitted to observe the tenor of his bearing, conduct and conversation, through the eyes and ears of those who saw and heard him; and from all that was there seen and heard, all the doctors concur in saying, that there was nothing in it all tending to prove him insane. His whole conduct while awaiting the arrival of his friend, Judge Carlton, was perfectly consistent with sanity. The little restlessness he manifested, though observed by Rawlings, with whom he was talking, did not strike him even as unusual, or seem to be the result of any unusual excitement, and was not thought of until after the announcement of the homicide. I submit, therefore, that it should not be taken now as any evidence of insanity at that time. If the doctors had concluded otherwise than they did, from what happened there, that he was insane, you could not have believed them; for all that he said related to his agricultural plans for the summer—the different crops he intended to cultivate in different fields; and nothing could have been more sensible and reasonable. On these subjects he and the witness had conversed before; and this coversation took up the former one, and carried it into details. If from such a conversation you should infer insanity, how long may it be before every one of us may find himself in a lunatic asylum for treatment? If to speak reasonably of one's own affairs be proof of insanity, then let the inmates of

our asylums change places with those who are wisely engaged in the pursuits of common life; for the clearest evidence of sanity in such case, must be held conslusive proof of insanity. But before we allow ourselves to be so misled, let us glance at the testimony.

Rawlins says that when he first came up to the defendant, standing on the pavement in front of Judge Carlton's office, he addressed him thus:

Question—"Ben, are you going up the street?"

Answer—"No; I am waiting to see Carlton." Then followed a long, connected and sensible conversation about farming, which in no part or degree evinced any mental quality or state so much as good sense and sound reason. It is too long to repeat here; but you will not forget it. It shuts the door in the face of the assumption that he was either insane or excited. But this testimony is strongly reinforced by that of another witness, who saw him leaning against Judge Carlton's office. That is not an attitude in which excitement or insanity ever displays itself. On the contrary, it indicates calmness and repose. The witness who saw him in this position, spoke to him thus:

Question—"Doctor, is there a little lawsuit going on in there?"

Answer—"I do not know."

And, having made this answer, he walked away toward the street. What is there in all this that does not tend to contradict the hypothesis of insanity—nay, more, that does not overthrow it?

As Judge Carlton came to his office, the defendant went to the door, knocked and called him out; and they went together at once directly to the defendant's own office. Nothing happened on the way to show that defendant was not perfectly master of himself. There was no sign of excitement in his face or speech. As soon as they entered his office defendant struck a light, and they seated themselves close to, and facing each other. They were there for consultation, and their position was well chosen for that purpose. It was the natural choice of sane men. They were friends. They knew and trusted each other; and what was then about to take place between them, and did in fact occur, must greatly enlighten us in regard to the mental condition of the defendant—the great purpose for which it was admitted as part of the evidence in the case. Let us, then, scrutinize their conduct and conversation with the utmost force of our minds, that we may justly estimate the weight of the evidence, or proof which it contains touching the defendant's mental condition at that time.

In the first place, it is manifest from all that occurred that the object of the defendant in taking Judge Carlton away from his office to his own, was that he might in private open his heart to a man whom he both knew and trusted; and who sustained the same relations to life and society—wife, children and friends—that he did himself. His purpose went further. He desired to take the advice of that man upon the line of conduct proper for him to pursue under the melancholy circumstances that surrounded him. And, no doubt, he needed and desired his sympathy. Behold them, seated as I have said, face to face, and close together, and listen to the conversation that follows. They were old and tried friends; and had been for many years. But that friendship was not a sufficient guarantee to satisfy the defendant that he could safely confide to it the awful burden of his heart. It must be tested anew. He must re-examine it; for he was about to make it the foundation on which he proposed to himself to build the weightiest structure that friendship ever reposed upon friendship. The process of re-examination began with a severe, searching, probing look, that went deep down into his friend's heart, as if to feel of and learn the stuff that it was made of. But that did not satisfy him. It was not enough. He sent a question after that questioning look. Listen, listen, gentlemen, that you learn the drift and connection of his thoughts: "Carlton, are you my friend?" He seeks that bed-rock on which he may build the structure of his purposes. His foundation must be the unshattered granite of true friendship. He will trust nothing else. It must be proved, too, before he will venture to lay a single stone upon it. His friend answered him: "Ben, you know I am, and have always been your friend." "That will do," thought the defendant, "I may plant the first stone of my heart's purposed temple upon that foundation. And down it goes. "Are you a father?" That points upward to the dome. Back comes the answer from the sustaining foundation, "I am." It is brief; but it tells the defendant he may lay another stone upon that foundation, for it is solid still. So, down it goes. "Have you a daughter?" The structure rises. The builder's purpose may be almost seen from what he has already done. But listen to the answer upon which his faith will still build. "I have—my little daughter Cora; you know her very well. She is three years old." All is right still. The temple rises—is almost complete. In the eye of reason it is so far perfect—without flaw, and safe beyond fear. So down goes another stone; and, if the foundation shall sustain that, he may stake life, and honor, and all upon it.

So, here it goes: "What would you do if a man should seduce your little daughter, Cora, and ruin her forever?" In this way had the defendant said in his heart: "I will compare the calm, unruffled judgment of my bosom friend with my own, by presenting to him an hypothesis, very distinctly and sharply framed, and exactly similar to the reality of my own sad case, on which my judgment and determination have already been formed. If his judgment accords with my own, it will strengthen my purpose, and make my path plain and my work easy." But here, for the first time, the response does not support the purpose of his mind. The faithful friend had been adroitly led to confront the gravest of all possible questions; and he stops short, saying: "That is a hard question. But what is the meaning of all this?" This led the defendant to open to his friend his own sad case; and he said: "My daughter Helen has been seduced, and ruined forever. I have it from her own lips. Madison Evans seduced her. I am ruined; Helen is ruined; my whole family is ruined. She and I had better be dead. I don't see how that infernal Evans and I can live in the same world." Then said Judge Carlton: "Doctor, for God's sake use no violence." And the defendant replied: "I don't see how I can help killing him, if we should meet." Again his friend told him he had better be calm, go home, and go to sleep. But, again, the defendant answered: "How can I sleep when my brain is on fire?" He did, however, finally become quiet; and promised to keep so; and his friend, agreeing to return to him in a short time, left him quiet. But Judge Carlton was not entirely satisfied that he was safe, and sent his brother James to defendant's office to take him home, after first telling him all about his misfortunes. When James got to the office, however, it was dark, and as the door-knob was broken off, he could not get in. The defendant was still there, for he was heard walking to and fro in the back room. And so Mr. Carlton went away and left him there. But he had heard enough to lead him to fear that the life of Evans was in danger; and he hastened to his office to warn him of that danger. But his office, too, was dark; and he went back to his own drug store and thought no more about it, until the defendant came there after the homicide had been committed.

Here, then, is the last scene in the tragedy in which it is pretended that the defendant showed any sign of madness; and this, so far as the mind is concerned, is the whole of it. What the defendant told Mr. Dunham forms no part of it. That came from him after the play was ended, and the curtain down. It is more properly,

therefore, a part of a new drama, one act of which we are now playing, than of the old, which ended in blood on the fifth of March. It is quite as fitly set in the second, as the conversation between Judge Carlton and the defendant is in the first. To this it has no relation. I say, then, what was there in all that was said and done in the defendant's office before the homicide that in the least degree tends to show that he was insane? Or, more appropriately, what is there in it all that does not prove that he was then a sane man, but angry, revengeful, and fatally bent on mischief and murder. Let me repeat the conversation between him and Judge Carlton, that you may see how solidly it adjusts itself to the circumstances by which he was surrounded; and to his determination, formed before leaving home, to kill Madison Evans. Examine for yourselves, and see how naturally it meets all the requirements of the best informed and most perfect human reason. If a single word were absent, it would be less perfect than it is; and whether we could tell what was wanting to make it complete, or not, I am certain we should feel that there was in it "some hidden want." At the same time, we feel that, to add anything to it, would be to inflict a blemish. When you have gone through it, without note or comment, therefore, ask yourselves whether it is possible that a piece of work so perfect is the creation of a madman? But hear it:

Defendant—"Carlton, are you my friend?"

Judge C—"Ben, you know I am, and have always been your friend."

Defendant—"Are you a father?"

Judge C—"I am."

Defendant—"Have you a daughter?"

Judge C—"I have—my little daughter Cora, three years old. You know her very well."

Defendant—"What would you do if a man should seduce your little daughter and ruin her forever?"

Judge C—"That's a hard question; but what does all this mean?"

Defendant—"My daughter Helen has been seduced, and ruined forever. I have it from her own lips. Madison Evans seduced her when she was a little girl. I am ruined, Helen is ruined; my whole family is ruined. She and I had better be dead. I don't see how that infernal Evans and I can live in the same world."

Judge C—"Doctor, for God's sake, use no violence."

Defendant—"I don't see how I can help killing him, if we should meet."

Judge C—"You had better go home and go to sleep."
Defendant—"How can I sleep when my brain is on fire?"

If human reason can frame a more perfect work than that, I should like to see it. Every question is to the point, and each follows the other as rationally as if it grew out of it. Every answer is fitly adjusted to its question. Both questions and answers are tersely put, and worthy of a place in the permanent literature of the language. And yet we are to believe that it is all consistent with homicidal mania. Nay, men of science, whose lives have been devoted to the great questions of health and disease, insist that it is true. Is this, indeed, the message which science brings from her pale-faced votaries who have spent their lives amid the sickly fumes and gases of the laboratory over the glowing crucible; or in the dissecting room, scalpel and microscope in hand, searching for light where there seems to be no light, but "rather darkness visible;' and for life and the laws of life, where naught is found but death?"

"O, star-eyed science, hast thou wandered there,
To bring us back these tidings of despair?"

At the office we lose sight of the defendant until he reveals himself at the door of the deceased. There he stands as cool and calm as any man "that ever cut a throat or broke a skull." Not Williams himself—the man of bronze—who in 1812 sent a pang of horror throughout the British Empire by his monstrous murders, could have hushed the tumult within him, or tamed his visage down to more perfect calmness and serenity than did the defendant, whom all conceded to have been, down to that moment, a man of good reputation for "peace and humanity." Standing there, at the door of that house which he was so soon to make desolate, in the presence of that wife whom he was prepared even then and there to make a widow, and within the hearing of those helpless children whom he had determined on that very spot and at that moment, to have reduced to the most miserable orphanage—(for can any one doubt that it was his intention to have slain Evans on his own door-sill, had he, instead of his wife met him there)—he was as calm and placid as if his visit had been one of peace and love. There he stood before that wife, so soon to be a widow—the mother of those children, so soon to be orphans—and yet she saw no signs of danger in his demeanor. Her woman's eye so proverbially sharper to notice such things than man's, beheld no trace of the fiend within him, to warn her of her coming woe. Talk not to me about strength of will after that. I admit that the law is

as read to you by Mr. Davis, from the decision of the Court of Appeals of Kentucky. I, too, say there must be capacity to distinguish the moral question of actions, to know right from wrong; and freedom of will to do that which is right, and avoid that which is wrong, or there is no moral, or legal responsibility. But had not the defendant made his choice when he stood at that door? Had he not determined what he would do? Had he not, even then, at the door of that house which he was about to make desolate forever, the most perfect mastery of his conduct? Had it been otherwise, could his purpose there have remained undiscovered? Why, had he been adamant, the presence of that mother was enough to have softened him into flesh, and made him relent and forego his hellish purpose. But he passed through it all unmoved and unchanged; and left his victim's wife as unconscious of her coming desolation as the infant she bore in her arms. He who could pass that ordeal need fear no second trial. Who but God can estimate the pressure which, in that awful moment, his will must have exerted upon his nerves, his emotions, his whole being—body and soul. Will you tell me that the will of that man had lost its power to control his thoughts, his emotions, his actions? What feature, what power—mental, moral or physical, of his whole being—did not then obey his will? He had literally harnessed the terrible passion of anger, malice and revenge to his fell purpose, and made them the pliant and obedient ministers of his determination to kill Madison Evans. And so he left the woman whom he had devoted to widowhood and woe, and went to seek her husband, for, as he said, "he had *business* with him."

He walked away to the scene in which he was to play so terrible a part, with as much composure as if his thoughts had been thoughts of love, and all his purposes errands of mercy. It was a dark night. "The dark places of the earth are full of the habitations of cruelty." But he went straight to his deed. He was heard to pass the house of Mr. Ward. It was the half-way place between the house of his victim, and the scene of the homicide. In two minutes more his pistol announced to "the drowsy ear of night" that the butchery had begun. Its flash was seen by one of the witnesses in the direction of the fatal spot. It required but a moment more to complete the deed, which had been determined upon three-quarters of an hour before. And now it is accomplished. Piteous God! how horribly accomplished! Think, gentlemen, of the meeting, the recognition, the announcement of the slayer's purpose, the shot, the fall, the prayer for life, the grim denial; and, then, think of the stabbing, the cutting off the defenseless hands; and,

finally, of the last fatal gash in the neck, severing arteries, nerves and windpipe, and putting an end to life and all its blessedness! But the picture would be incomplete without an allusion to the last breathings of the dying man. Mr. Davis thinks that they were not heard—that they did not occur. I am entirely certain that they did occur, and that they were heard. The witness could not have used the language she did, if she had not heard them. Many of our soldiers have heard the same sound, and it will live in the memory of all who have until their dying day. I pray God it may not mingle in my final dreams, nor haunt me when I come to die, with the greatest horror of our last bad years. The world has no other sound like it. It is not susceptible of a complete description in words. As the old lady told you, it is, indeed, "a gurgle;" but it is something more. It is a fierce, almost whistling, gurgle, as the air and blood are sucked into the lungs together, and then blown out through the severed tube, in the last fierce struggle for life when life has lost its means. Think, gentlemen, I beseech you; think of all these horrors, and then you will be able to think of justice. Let the man who went forth to do this deed, "to win no cheap reputation for bravery," in the words of Judge Carlton; "but for a purpose—to kill Madison Evans, because he had seduced his daughter;" learn that such deeds can not receive your sanction; that such bravery and such butchery must cease from the land; that it is not in this way that the true hero wins his laurels; but that shame, everlasting shame, and dishonor must be its reward. "No cheap reputation for bravery," to be sure! Far, far away, be the evil day when such a standard of courage shall be raised up for our boys to follow. It is not the true knight's standard. He scorns all advantage of sun, or wind, or rain, or weapon; and conquers, or is conquered, upon an equal field. But in all this revolting and horrible transaction there is not a single trait, or trace, of true, manly courage, such as burns in the breasts of "the good and the brave." Everything about it is one-sided. There is no fair play—no sign of fair play—in it all. And all fair-minded, just men must, in my opinion, so regard and condemn it.

Let us recur to the transaction, that we may trace the moral evidences of self-possession, of reason, and of the motives which determined the judgment and gave direction to the will, they afford. They are not difficult to follow.

The slayer, predestined by his own determination, has sought and found the victim of his revenge; for what else shall we call it? They met in the dark night—no star looking out from heaven to witness the scene of outrage and cruelty that was there to pass, in

that valley of death, making it forever memorable as a place of horrors, until the school boy of after times, who shall learn the story, will feel his hair rise, and a strange chill steal over him as he walks silently by in the darkling twilight, to his home.

> ——O, thievish night,
> Why hast thou, but for some felonious end,
> In thy dark lantern thus closed up the stars,
> That nature hung in heaven, and filled their lamps
> With everlasting oil, to give due light
> To the misled and lonely traveler?

In the midst of the darkness the slayer goes straight to his victim. Answer me, now, these questions. Whom had he motive to kill? Whom had he "determined to kill" before leaving home? Whom had he prepared himself with arms to kill before leaving his office? Whom has he found in the darkness to kill? Whom does he now kill? One name answers all these questions, according to the evidence; and there is not another word in the universe that will answer any one of them. Is all this chance? If it is the result of insanity it is nothing else. Has chance made the name of "Madison Evans" the true answer to all these questions, and made every other name unfit to answer any one of them? The whole difficulty of the case passes away before these facts. Why did he kill Madison Evans? Because he seduced his daughter. Listen to his own sententious, almost epigrammatic account of the transaction. He told Dr. Raridan that the following dialogue occurred between Evans and himself:

Defendant—"Who comes there?"

Evans—"Evans."

Defendant—"Do you know my daughter Helen? You have seduced her, and I intend to kill you."

"I then shot Evans, and he did not afterwards rise. He begged me not to kill him; but I told him I intended to kill him."

In all this where do you find any symptoms of insanity? Again, where in it all is there a single fact wanting to make it complete as the work of a sane man? The doctors agree that in what occurred at the house of Evans, and the place where he was killed, there was no indication of insanity.

I think I have now shown you that, down to the accomplishment of the homicide, there is no reason whatever to infer that he was insane at any time before its commission. If that be so, then we can not but come to the conclusion that he was a responsible agent when he killed Evans; and is, therefore, guilty of the offense for which he is on trial before you.

Before we leave the valley of death, let us ask ourselves a few questions. Suppose the defendant had been arrested there, what would you say of his act? Upon all the facts which I have discussed, and I have considered all that then existed, could you have come to any other conclusion than that he had been a sane man at every stage of the proceeding, from leaving his home until the bloody consummation of the purpose with which he set forth? Tell me what single symptom of insanity there is in all the facts, and groups of facts, which have led us, step by step, from the cause to the consummation of the homicide? And tell me, again, what mark of insanity is wanting in them all?

Now, that the worst has come to the worst, he desires to see him again; and again to throw himself upon his sustaining breast, that he may regain if possible his own strength of soul—now so sadly lost—by feeling the kindly heart of the man he loved and trusted most, beat back against his own. To Carlton's office, therefore, he resolved to go, and did go. It was full of men—his neighbors and friends; but he does not trust them with the story of the night. He knocks, and asks for Carlton at the door. He was not in; and he sends for him to come and see him, and with the message, information of the place at which he may be found; and where, in a few moments afterwards, he was found by Mr. Rout and Judge Carlton. I do not propose to dwell upon the scene at the jail. It is alike consistent with high passion, or good acting; and, as there was occasion for both, it is unimportant to spend time in discussing what must necessarily be an immaterial question.

Let us remember, however, that from the moment that the homicide was committed, the defendant had the strongest motives in the world to adopt any means that might enable him to escape the legal consequences of the deed he had done.

There were but three doors through which escape was possible for him. He might commit suicide. He might fly the country. He might surrender, stand his trial, plead insanity as he has done, and take his chances for a favorable or an unfavorable verdict, at the hands of a jury. These categories are exhaustive.

I think his antecedents prove that suicide was out of the question with him—that his love of life, and of "wife, children and friends," made that impossible for him. You will remember how he shrunk from the apparent coming spectre of the grave, when he thought some years ago that he was consumption's victim. Why, his fears of death were then so great that he now brings them forward as evidence of a predisposition to insanity. Had he then greater reason to turn away from the valley of the shadow than

now? To assume that, is to build without a foundation. There is no evidence to support the assumption. He turned away from suicide, feeling if not saying—

"Thus conscience does make cowards of us all."

It was quite as difficult for him to fly this country. That would involve and lose him all the interests for which he killed his fellow. Family, home, and even the "point of honor" upon which he had placed it in his own heart, were all lost in flight. Flight, too, would establish his guilt; and from the first his chances of escape would be zero. If captured, the chances of a favorable verdict upon any ground whatever would be lost. Thus, "in the lowest deep, a lower still" would open to receive him.

He may have reasoned thus: "I have killed upon a motive that must appeal strongly to the sympathy of my neighbors. Can I not point to my family's wreck and ruin, and ask them, with something more than a show of reason: Was I to endure all this at the hands of him who had wrecked and ruined all? May I not be able to get the facts before a jury, and even ask them to acquit me in the very teeth of the law? May I not say,"—through Mr. Davis he has said—"what do you care, gentlemen of the jury, about the law? And if I can only get the jury to forget their oath, may they not let me go free?" And, gentlemen, there was always a chance among the chances, that a jury might do it. Mary Harris had been acquitted, who had killed her seducer. Might he not feign and fare as well? He knew a thousand times more of the medico-legal doctrines of insanity than she. He was a learned physician and surgeon, who knew all the saws and soundings of the schools—all the symptoms and simulations of insanity—its illusions, delusions and hallucinations. If ever man had cause to feign insanity, certainly he had. If ever man was prepared to feign, certainly he was.

Whether moved by these motives or not—whether sane or insane, he had no chance to escape by flight. That must have been out of the question, even from the moment his necessity seemed to require it. Had he possessed the wisdom of an angel, he must have failed, without his wings. He was, therefore, as a reasoning and reasonable creature, capable of comprehending his situation, morally compelled to front the great emergency which his conduct had invoked. That he would front it, was determined before he reached Judge Carlton's office after the commission of the homicide. He had gone further, and selected the ground on which he proposed to stand. He had said, in his heart, "I will place it all

upon a point of honor." But that ground had to be reconsidered, and has been abandoned by the defense here. They have gone far off from it, and insist now that it shall stand upon a melancholy condition of being, in which

"Laughter is not mirth, nor thought the mind."

A condition of mind to which honor and shame, infamy and fame are equal; for the maniac regards alike, the hiss of serpent-tongued slander, and the blast of the trumpet of fame.

In considering the new position of the defendant—the plea of insanity—it must, I think, be consistent with all the facts admitted or proven in the cause before it can avail him. It must be inconsistent with all the essential facts of the contrary hypothesis. In other words, we have opposed to each other two conflicting and hostile theories. According to one, the defendant was sane at the time he committed the homicide. According to the other, he was insane. Now, my proposition is that if either of these hypotheses explains and harmonizes all the facts proven in the case, and the other does not, then you must adopt the former, and reject the latter.

We have traced the defendant down to the time of his arrival at Carlton's law office with his hands red, if not dripping with human blood—that blood whose equivalent at the hands of the shedder thereof, God, in the far morning of the world, exacted in these solemn words: "Whoso sheddeth man's blood, by man shall his blood be shed," words which have lived ever since in the hearts of all peoples, potent for their purification and preservation. He knew these words. He knew, also, what hands were his. All the waters of the ocean could not wash them clean again. * * * *

But mark what follows. Mr. Dunham tells him—"I fear, Doctor, you have made a mistake and killed the wrong man. From what I hear I fear you have killed Col. Williams." "My God!" exclaimed the defendant, "if I have killed Col. Williams I am ruined indeed; for he was one of my best friends. O, let me die. Let me to the medicines." Is this evidence of insanity? On the contrary, does it not clearly establish his sanity, by showing that he was all alive to the relations and obligations of friendship; and felt most keenly at the thought of having killed a friend for an enemy? But there is something incomprehensible in what Mr. Dunham says to him in relation to the *wrong* man. What has madness to do with a "right" and a "wrong" man, when it drives the madman forth by an irresistible impulse to slay indiscriminately whom it may slay; and when all experience and science go

to show that the blow will be likely to fall a hundred times upon an indifferent person to the slayer, or upon some of his nearest and dearest relatives and friends before it will descend once where there exists an adequate motive to kill? Mr. Dunham could not and would not have committed so great a folly as to address such a remark to an insane, "raving maniac;" and, if the defendant had been insane, the announcement of Mr. Dunham that he feared "the wrong man" had been done to death, would have called out from the defendant no answer showing that his mind agreed with that of his friend that there was "a right man" to kill and that there was also "a wrong man"—and that Col. Williams was the latter, and that Madison Evans was the former. Indeed the whole case shows that Madison Evans was, in fact, in the estimation of the defendant and his friends, the only "right man" in the whole world. Do madness and chance thus select their victims where the sane man's motive would also lie?

"He said that he was ruined, his daughter was ruined, and that his whole family were daughters, and they were all ruined." The connection of his thoughts with his relations and the consequence of Helen's fall, is pregnant with evidence of sanity. The experience of the whole world will sustain the conclusion which he draws from the premises. Such a misfortune falls like a blight upon the sisters who share the name and blood of the fallen.

"One sad lossl soils a name for aye."

* * * * * * * *

Dr. Athon has said, I know, that he remembers the case of Hamlet's ghost, and that this, though differing in object is like that in kind. He said, further, that a person could, with such an illusion before him, carry on a conversation with a person who knew nothing of his disease, and so demean himself as to excite no suspicion of the presence of anything wrong. I questioned the correctness of the Doctor's opinion then, and I still think he was greatly mistaken. I am sure that Shakespeare will bear me out in my dissent from the learned Doctor. I will venture to recite the entire passage, from the entrance of the ghost until it disappears, and leave you to settle which is the more reasonable opinion—that of the witness or that of the poet. Before I present the passage it is proper to say this illusion of the ghost had been seen by Hamlet once before, and was not, therefore, so likely to startle and terrify, as at first. The defendant, on the other hand, saw the flaming image of his daughter, for the first time, when going

from his office to the house of the deceased, and during the conversation with Mrs. Evans. But here is the passage from Hamlet:

Ham. A king of shreds and patches,

[ENTER GHOST.]

Save me, and hover over me with your wings,
You heavenly guards! What would your gracious figure?
Queen. Alas, he's mad!
Ham. Do you not come your tardy son to chide,
That, lapsed in time and passion, lets go by
The important acting of your dread command? O, say?
Ghost. Do not forget: this visitation
Is but to whet thy almost blunted purpose.
But, look, amazement on thy mother sits:
O, step between her and her fighting soul:
Conceit in weakest bodies strongest works:
Speak to her, Hamlet.
Ham. How is it with you, lady?
Queen. Alas, how is it with you,
That you do bend your eye on vacancy
And with the incorporal air do hold discourse?
Forth at your eyes your spirits wildly peep;
And as the sleeping soldiers in the alarm,
Your bedded hair, like life in excrements,
Starts up, and stands on end. O, gentle son,
Upon the heat and flame of thy distemper
Sprinkle cool patience. Whereon do you look?
Ham. On him, on him! look you, how pale he glares
His form and cause conjoined, preaching to stones,
Would make them capable. Do not look upon me;
Lest with this piteous action you convert
My stern effects: then what I have to do
Will want true colour: tears perchance for blood.
Queen. To whom do you speak this?
Ham. Do you see nothing there?
Queen. Nothing at all; yet all that is I see.
Ham. Nor did you nothing hear?
Queen. No, nothing but ourselves.
Ham. Why, look you there! look, how it steals away!
My father, in his habit as he lived!
Look, where he goes even now, out at the portal!

[EXIT GHOST.]

Queen. This is the very coinage of your brain,
This bodiless creation ecstacy
Is very cunning in.

Either the Doctor or Shakespeare is at fault. The whole world of thinkers have accepted Shakespeare as a standard on all such subjects. Shall the Doctor now dethrone him and become the first among the sons of light—the High Priest of the great temple of creation?

Of this degree of homicide, therefore, all the circumstances of the case, it seems to me, conclusively prove him guilty. Upon this point it is your right and duty to consider carefully, all the facts and circumstances of the cause in their relation to the law as the court shall give it to you, and if you disagree with me in regard

to the guilt of the defendant, I shall not arraign you at the bar of public or private opinion. On the contrary, I shall bow to your verdict with respectful submission. If, however, your conclusions shall consonant to my own, I shall accept it as a true and just verdict, while I shall regret the consequences that must follow.

Before concluding this argument, I deem it highly proper that I should recur to one subject, which I would gladly have omitted. I allude to the character of the young lady whose misfortune, or fault, enters so largely into the terrible tragedy which we have been called upon to review. Four years ago on the 10th day of March, she was a young lady of fourteen years and eight months of age. Many of our girls in the west at that time of life are wives and mothers, conducting with prudent oversight the affairs of their household. At that time Miss Newland made the acquaintance of the deceased, and became a pupil in his school. He was a minister of the gospel, a teacher in the Sabbath School, and, so far as appears in the evidence, a man of faultless propriety in the observance of all the outside forms of the Christian religion. She was already or soon became a member of the church. She was a bright, intelligent and educated girl. She must therefore have learned from the public ministrations of the deceased that all vice is sinful and involves the soul in ruin. She could not have attended Sunday School without learning from the sacred book that fornication and adultery are condemned of God. If, therefore, he proposed any line of conduct for her and himself at war with this knowledge, she knew that he was a married man, and was furnished by his public character and teaching, no less than by her mother's precepts and example, with an answer with which childhood itself could and would have silenced the base insinuation or suggestion at once. Nay, the example of the whole world around her was an argument against vice and in favor of virtue. For even the few sporadic cases of vice, which public opinion everywhere so cruelly lashes with infamy and disgrace, tended to support her and keep her pure, if she was pure already. Thus the church, the Sabbath School, the home circle, the mother's example, and that of the whole community, as well as all the holy instincts of childhood, would have repelled, one would think, every base proposal, coming from whatever quarter, unless, indeed, there was some innate inclination on her part to go forth to meet its baseness. If she was smart she must have known the difference between vice and virtue. If she were pure she must have loathed vice and worshipped virtue ; and when did virtue ever abandon her votary to the loathsome embraces of the lewd seducer? It is not in the experience of mankind, and

all that holy saints, inspired bard or sage divine have ever written, repel the thought. They present virtue to our view upheld by all the powers of the heavenly hosts. She is the strongest, fairest daughter of God, and ever dwells with all the pure in heart among the children of men.

> "So dear to heaven is saintly chastity,
> That when a soul is found sincerely so,
> A thousand liveried angels lacquey her,
> Driving far off each thing of sin and guilt."

And the great Shakespeare tells us it is impossible for virtue to fall, no matter who may tempt it.

> "But virtue as it can never be moved,
> Though vice should court it in a shape of heaven,
> So lust, though to a radiant angel linked,
> Will sate itself in a celestial bed,
> And prey on garbage."

I had hoped and intended that there should be no occasion to assail the character or veracity of Miss Helen Newland. It was to avoid that that the prosecution admitted that she gave her father a recital of her wrongs and of the relation which the deceased sustained to them, and that her father believed her statement to be true. This placed the truth or falsehood of the statement out of the question, and while, according to the decision of the court, it deprived us of the right to impeach her veracity, I now think the principle of the decision should have deterred the defense from insisting upon the truthfulness of her narration. It has not, however had that effect. On the contrary, each particular circumstance of her real or imaginary seduction has been insisted upon as if it were as true as holy writ. I do not complain of the decision. I only regret the course of the defense, for it compels me to scrutinize the internal evidences of the veracity of her testimony. According to her own testimony, she is now nearly nineteen years old, and was four years ago as nearly fifteen. She was a member of the church, the bright daughter of a good mother. She was even then of marriageable age. She held a high place in social life. According to her statement, she must have fallen into vice soon after that time, and kept it up during all the time intervening between then and now. She clothed fornication and adultery in the habiliments of virtue, morality and religion, and lived in the hearts of her parents, the bosom of the church, and the social circles of the town as a pure, chaste and religious girl, when she had no right to any other character than that of a wicked and vicious woman. She deceived all who associated with her or were related to her. Father

mother, church and general society, all believed her heart the shrine of virtue, when, in fact, it was the stew of the most filthy passions that degrade and ruin mankind. What right has she now to claim the confidence of the courts and juries of the country?

Can deception go farther or be maintained longer than she has already carried it? If she would deceive her father, her mother and the church, are you more dear to her than they, or less likely, if you give credence to her story, to be deceived. She never connected the name of Madison Evans with her fall until assured by her father that if she would give up the name of her seducer, he would not drive her from his home. The promise implied a threat that if she did not he would. She was as weak now in morals as before—far weaker in all the circumstances that tended to support her. Here, then, was motive quite sufficient to have appealed strongly to a better nature than she appears ever to have possessed. Who can tell the effect of such an appeal to such a girl. She was an intelligent girl without moral virtue to keep her from walking in the paths of falsehood and fraud. One name would serve her purpose as well as another. If she really loved the man who had seduced her, as nearly all who are seduced do, she had the most powerful motive that ever appeals to woman's heart, to give the name of another, and save the real author of her downfall from the terrible consequences of her father's vengeance.

This wicked girl, then, is the only accuser of the slaughtered man. Upon her statement her father is prepared to do a deed that must forever shock the heart of the good and merciful. He hears the testimony of his fallen child—fallen long ago, and fallen, O, how deeply!—hears it in his own parlor, in the absence of the deceased, who is allowed no day in court to be heard in his defense. No witness is called for him, and no doctrine of reasonable doubt allowed to shield his name from as foul a charge as can be brought against a good man's honor. He is condemned by a self-constituted tribunal, that had already bribed the only witness in the cause, by a promise of protection on the one hand, and an implied threat of abandonment on the other. Well can I imagine how the whole aspect of the case might have been changed, had the other side been heard. I can conceive the oft-repeated lewd advances on her part, the resistance of continual temptation on his, even his final triumph, and then her settled malice and revenge, for

"Hell has no fury like a woman scorned,"

all culminating in her fall, and his death, cruelly inflicted upon her mere worthless word. It is just as probable that he had no connec-

tion with her ruin as that he had; for her word can afford us no reasonable ground of probability in the case. Call up from his grave the poor, murdered victim of this strange trial, give him a seat by the side of the defendant, and let him direct the examinations of the witnesses so far as their testimony tends to his crimination, and who shall say that his reputation might not be vindicated? The defendant, however, denied him this right, which the law gives to all offenders, from the petty thief up to the prowling midnight murderer.

There is no other reason; for the statement of the bright, bad girl, who alone accuses him, is as mere fabrication as ever was framed to subserve a failing cause. There is scarce a man in this community whose fair fame may not be blighted and destroyed in the same way. First sanction his assassination, and then when he is gone make the necessities of his assassin the measure of his infamy, and the foul work is of easy accomplishment. It is for you to say whether this double work of destruction shall receive the sanction of your verdict.

The cause, so far as I am concerned, is now in your hands. I submit it to you with the utmost confidence that you will render a conscientious and true verdict. If it shall be one of acquittal, I shall accept it as your best judgment upon the law and facts of the case. I shall stand by it and for it; because it will be the only verdict that the law authorizes, or allows. It will, therefore, stand to us all as and for the law. But in this lies the danger of a mistake. If your verdict to-day, or whenever it shall be rendered, may lead to others like it—may sanction brute violence and cruel murder, on the one hand, or uphold the law, and make life in all its relations secure and sweet, on the other, you cannot be too careful in your consideration of the material out of which you are to frame it. In my opinion, the evidence is such as to require a verdict of guilty, as charged in the indictment against the defendant. But I may be misled by my relation to the cause, and, therefore, have no quarrel with those who do not agree with me. I have endeavored faithfully to perform my duty. I have done it according to the measure of my ability; and now surrender it to you. Take it, and do what you think justice requires; and I doubt not that the law will be vindicated, private life and honor protected, and the foundations of social order and good government rendered secure alike against overthrow by violence, on the one hand, and the failure of those entrusted with their preservation on the other, to perform the duties imposed upon them by the constitution and laws of their country.

Acquitted.

THE WARD WILL CASE.

Tried at Detroit, November, 1875.

The contest over Captain E. B. Ward's will, and the vast sums involved in the litigation, as well as the eminence of counsel and high character of the parties and witnesses sworn, will be clearly shown in the extracts of arguments here given. The contest lasted *fifty-five days*, and continued to increase in interest to the end.

A brief sketch of the leading counsel will better give their style of address and manner of reaching a jury:

Hon. J. Logan Chipman has made the art of oratory a study for years. Of ripe age and excellent training, full of actual experience, in a large city practice, he has learned the art of saying things to please, convince and persuade men. He deservedly holds a very high rank as a criminal lawyer and leading advocate, and although at present judge of the Superior Court of Detroit, he occasionally appears in important jury cases. He has been City Attorney, Member of the Legislature, and received the nomination for Congress.

Judge Chipman is a strong man, medium-sized, now nearly fifty, of robust frame and friendly manner. In the conduct of cases he is sagacious and original, with a wonderful memory, powerful voice, magnetic face, clear, forcible and earnest in delivery. While others take notes, he draws pen-pictures of houses, birds, trees, ships, animals and men, in crude forms, but never loses his interest in the trial, frequently stopping a witness on a material matter, as if by accident.

His speech is full of quaint surprises, good-natured jokes and quiet humor. He begins in a jovial way, comments on counsel, looks and talks to the empty chairs, draws a smile from the jury, turns like an athlete, and for an hour or more pours out a torrent of strong, logical and eloquent periods, that move and convince men.

With an excellent memory of facts and no notes, he is fluent in delivery. He gets hoarse sometimes, but talks right on. His language reports well as delivered, without the slightest change. In his vehemence he composes correctly. Measured as an orator, advocate or logician, he is of the first rank. In a city like New York his fame would soon become national.

Hon. Wert Dexter, of Chicago, who closed for the defense, is an advocate of great power and acknowledged ability. Large, strong, plain, about 50, full dark beard tinged with gray, something of a western appearance, but a refinement of manner and diction, with all the force and logic of a New England senator—not unlike Mr. Blaine. There is a charm in Mr. Dexter's manner and a singular music in his voice that is always attractive. He uses manuscript freely—reads often, but reads like a master in elocution. But once under way he fills with energy. At times he grew tender and pathetic, and toward the close of his address he read a beautiful extract, entitled "The Good Aunt," in a most touching and eloquent manner. The following extract gives but an imperfect glimpse of his power with a jury.

Mr. Dexter was ably assisted by Ashley Pond, on questions of law, and by E. W. Meddaugh, Esq., a celebrated railroad attorney, who made a lengthy and effective argument to the jury.

The chief feature of this singular suit is the sharp and stinging contest of counsel, the powerful appeal of Judge Chipman to the jury and his cutting reply to Wert Dexter, in the little episode reported. It was a legal duel, and had in its history much of the elements that excite juries and spectators. The crowd packed the court room constantly; the interest was intense throughout. The two-days' speech of Judge Chipman was delivered without notes. The gist of the action was: "Whether Capt. Ward's belief in spiritualism and the influence of his young wife were enough to create over him an *undue influence* in making his last will?"

A very effective point was made by Hon. Theodore Romeyn, one of Michigan's ablest counsel, when he attempted to show that Capt. Ward secured a divorce in two weeks from his invalid wife, married a second wife, and took her to his home while his invalid wife remained in ignorance of the divorce! This circumstance was repeated many times in the hearing of the jury by Mr. Romeyn, and although excluded by the court, was kept before the jury, and did very much in shaping their verdict.

The trial was ingenious in other respects; the skill of Ashley Pond was constantly employed with effect in all questions of law and evidence; the solid sentences of D. Darwin Hughes were convincing to the jury, and added dignity to the defense. Inch by inch, all the ground was contested, with bitterness and ability, and nothing was lacking to complete a grand tragedy in real life, but strong hands of counsel, in restraining an insane son, Henry Ward, from shooting Mr. Dexter in open court.

In the passage at arms between Messrs. Dexter and Chipman occur some strong words not often heard in court contests. Coming from large men, they were at times startling and dramatic.

"I am here," said Mr. Chipman, "to try this case, to try it bravely, serenely, and I will try it boldly. I am here to call things by their right names, and if Mrs. Ward has done wrong, I will say that she has done wrong, and say it though ten thousand devils interfere! I want no vaporing; I make no threats; but as God is my judge, I will neither court a quarrel nor shrink a responsibility!"

As these words came out, with the fire of an enraged genius blazing from the eye, trembling with heated anger from the lip, piercing and stinging through the air with vehement elocution and intense delivery, they seemed to thrill every listener in the crowded court room.

The Closing Argument.

HON. J. LOGAN CHIPMAN'S ADDRESS TO THE JURY.

Mr. Chipman in opening his address to the jury, began by commenting upon Mr. Hughes's declaration that the trial was a farce, and said that he himself regarded it rather as a tragedy. If to disinherit and degrade one's children, to divorce one's wife, to crush out hearts until they snap, is a farce, this trial is; if they are calamities, it is a most serious matter. The jury have not been called to sit here nearly two months to play harlequins; they are to decide great principles, that justice may be done.

The issue to be tried here is, "Whose will is this!" Capt. Ward's, or some one's else? Was Capt. Ward in a frame of mind to make a will? and could he do so with perfect freedom? The contestants assail it as unnatural—inofficious in the barbarous Latin jargon of the bar. It does not deal properly with the objects of the testator's bounty. It is a fallacy and baseless in law to say that a man may deal as he will with his property. If a will is unjust, oppressive and calamitous the law steps in and asks why it is so.

CAPT. WARD.

On the second day of last January a man dropped dead in the streets of Detroit. What manner of man he was, the testimony has in some slight measure disclosed. He had been a bustling, active, strong man of affairs; we hear of him in all directions, hear

of him in Arizona, South America, Alabama, Louisiana, Ohio, Iowa, Canada and Michigan. On the day he died he seemed to be in as good health as he ever had been. What, then, was the matter with him? Did he die because he was well? Not so; he came to the spot where he fell, the victim of disease that had followed him for years; that had almost blasted the life out of him once before coming like a stroke of lightning. Yet witness after witness has had the temerity to testify that he was as sound on the day of his death as he ever had been before. Gentlemen, he was not strong either in body or mind, as he sank with all his millions, in the dust and dirt of the city, dead! He left his millions behind him, just as will all these rich and powerful and enterprising men who have come up here to crush out two boys with their testimony. His death was no matter of chance; the processes had been going on for weeks and months and years. He had had an eventful history. When he has a boy he was at the island of Mackinac, coming a little later to the river St. Clair. In his early life he was weak and sickly, as his sister tells you. He carries in his veins blood tainted with insanity—blood which makes your speculators and heroes of Black Friday, and which shows itself in acts which make others unhappy. He plunged into a business of a most exciting character, and as he comes toward the close of his life we find him under an excitement that was perfectly marvelous, and the only wonder is that he had not gone from us long before he did. Speculation of the most gigantic kind—itself a cause of insanity—was the habit of his life, and as he came to the period of his divorce he seems to have accelerated the speed of his wild projects. What had he, at the age of sixty-three, to do in South America, and the desert wastes of Arizona, except to sink his money. Was his the tranquil state of mind that comes to old age? They call it enterprise! I tell you it was fever—a blind, reckless desire to keep himself in action, because there was that in his mind which would not let him rest. It was not judgment, it was the mere impetus given by habit; his successful ventures were the faintest glimmerings of his old genius. Is it the fashion of men generally to expand at his time of life? Do you hear of Commodore Vanderbilt doing so? He consolidates all his interests, so that standing in New York he can keep his hand upon one lever—not upon a hundred levers.

WHAT IF THE WILL IS BROKEN?

The situation, gentlemen, in case this will is set aside, is a proper object for your consideration. Whether it stands or falls, the widow will be left a very rich woman; she will have her dower,

and will be well cared for. To that we have no objection. But we desire that her children, as well as herself, shall stand in the distribution of this estate as the first wife and her children would. Who else are interested? Miss Emily Ward. But she has already told you, under oath, that she has enough—for herself. Capt. Ward has already provided for her. It is only for her retainers—the Octjens and the Owen children—that she wants this large bequest. But it will be no great hardship to refer them to their own exertions. Who else is interested? Tubal Cain Owen! He is interested to the extent of ten thousand dollars a year for his services as executor. Just think of it! The four executors are interested to an amount equal to what the state pays its twenty circuit judges—to more than it pays its governor and the whole staff of state officers. But it will be no hardship now for Owen to return to an obscurity in which he will draw no more rich wills. Mary Ward will get her share of the estate and marry the young man of her choice. Henry and Lizzie, incapable of taking care of themselves, will be protected by the law, which after all is the best friend of the widow and the orphan. Milton and Charley will have their shares, and will be enabled to start upon whatever career of honor and usefulness that awaits them. Are we asking you to stigmatize or oppress anybody? We only want the statutory disposition of the property—that disposition to which the common consent of mankind has been given, and which has been made venerable and respectable by ages of usage. If there is any hardship in this I am unaware of it. They say it is setting aside the sacred bequest of Capt. Ward. Mr. Hughes appealed to some of you on the score of your gray hairs, and asked how you would like to have your wills set aside. That was hardly a fair way of putting the matter. It would have been fair if he had added the supposition that you had done all the antics which Capt. Ward has committed—if you had consulted spirits as to the sanity of a wife of many years, and had relied upon them as he did. Rich men have no patent by which to keep their minds sound and their souls safe. This will is not that of Capt. Ward in his best days. It is of a man, not the father of these children, but the wreck of what that father once had been, led away by the blandishments of his religion and enfeebled by disease. Is this unkind? It is not, if it is true. It does no one any wrong. Therefore, there is no injustice in asking that the will be broken and the equitable provisions of the law be allowed to prevail.

It is a fact to be dwelt on with suspicion and inquired into, that the will overlooks and disregards the natural objects of the testa-

tor's bounty. Where a will is unnatural those who propose it must come, with an excuse in their hands, and show you why it is so. Have the proponents in this case done that? Do you find that these boys or that Mary was crazy? Why should Capt. Ward have disinherited them and branded them with the brand of insanity? We have shown that he himself came from an insane family, and that his own apprehension of becoming insane was almost a mania with him; we have shown him in his old age wildly speculating and spreading his ventures from one end of the world to the other; we have shown you the men who surrounded him in these ventures, not the kind of men whom great men usually call about them, but men like Tubal Cain Owen, like little Mumford, like little Thompson. The other side themselves have shown you that he was not surrounded by men like Newberry, or Pond, or Meddaugh, or Mr. Joy, or like that leader of the bar, Mr. Hughes. The places of the giants are filled by the dwarfs! We have shown him falling off in his strength to cling to strong things. You have seen him in the companionship of those who knew him intimately, and they tell you, some willingly and some not, that after the paralytic stroke of 1869 he was not the man he had been before. The baleful effects of the disease that had blasted him never left him. He said so himself on the day before his death, and his sister could always see them. At all times and all seasons the glories of this new religion were on his tongue, and he was striving to make converts. He referred the most trivial affairs of life to the spirits. We maintain what I believe is common sense, that while you may not condemn a man's reason on account of his religion, that you may take his acts in connection with his religion as with anything else, and make him stand or fall by them. It is not that every spiritualist is crazy, or that spiritualism is evidence of an unsound mind, but that Ward's conduct under it showed infirm purpose and loss of will and moral power. He cast upon these boys burdens that older heads and stronger shoulders would have given way under. He never gave them any choice. He took mere puny striplings and said, in his heart, "They shall go forth and be giants." It was wrong-minded or wicked to do so. I have had to call your attention to the tremendous force that the testimony we offered in regard to the divorce would have had. The other side have come here with pretensions of saintliness, and I have had to strip the disguise from them and show them to be mere seekers after gold. They have held these boys up here as moral lepers, and yet they think it horrible that we should advert to the fact that a young woman, fresh from her girlhood, should throw herself into the arms of a doting old

man. I have clung to the moral sense of the community, yet I have asked you to do exact justice to this woman and to these boys alike. I need not tell you that the expectancy which surrounds this case, and the large audiences that come here teach us that something extraordinary is looked for. There are great principles at stake here, affecting the good of human nature and of your kind. I wonder that your hearts do not grow sick, and that you do not begin to believe that the will of man is not a feather wafted down the wind. Still there is strength and goodness somewhere, and you must not lose faith, as I do not, that the right shall prove the better, and triumphant in the end. They appealed to you in the name of religion. So do I; in the name of religion in its purest form united with reason. I have no defense for the impositions which Capt. Ward practiced upon himself—upon the form of belief which he entertained, and which the gentlemen of the other side found it necessary to accuse the priests and apostles of in order to make you think he did not entertain it. Spiritualists themselves will tell you that his conduct in regard to spiritualism was unsound; it was a hotch-potch of horrors that clustered around him. A man acting under this dictation is not one of sound and disposing mind. Are we to surrender our society over to this sort of thing? Are we to cut loose from all reason? Are we to go into the woods with the Indians and think, because the trees creak and rustle in the frosty night, that disembodied spirits are begging to be released from imprisonment?

This case has passed before you in all its serious aspect. You have seen the selfishness, heartaches, greed for money, desire of revenge, fear, death. All have passed before you like a horrible dream; so grotesque and painful are the realities of this matter. Are you to sit here like stocks and stones and be told you have nothing to pass upon? We will leave this issue to you with perfect confidence. We do not believe that a sane, just man, who ever loved his wife and children, will hesitate an instant in saying that these children have been most cruelly wronged by this will. Do not be afraid of your warm hearts that guide you in the ordinary affairs of life. Counsel have asked you to put these children in straight-jackets and consign them to an asylum, as if they were cursed with the disease of insanity. I know it will not be in your hearts to put that burden upon them, knowing, as you do, what a hard thing it is to live in this hard world. Imagine yourselves at this age, and with the consciousness that you have sound minds, and yet that a jury has declared you crazy, for that is what the gentlemen of the other side ask you to do. It were better to take

the life from them now than respond to the appeals to find them crazy as a charity. When did such a thing become a charity? Gentlemen, you never will do this thing. There will never be a jury on the face of the earth that will so blast their young lives. Therefore, I look to your doing the rightful thing in this case. With your strong arms you will strengthen the weak; with your kind hearts you will comfort those who are cast down. You will say, "We are insensible to the blandishments of wealth, beauty and eloquence, and will do right though the heavens fall." You will rectify the wrong that Capt. Ward did—no, not that he did, but that was done by his delusion, his insanity—that was done under influence. It will not hurt the dead man to say that his mind was lost, but to the living it would be a deadly curse. I thank you for the kindness and attention with which you have listened to me. It has been a joy to me to speak in behalf of the right and of justice. I leave their case with you. I bid you to be true, diligent and sympathetic. While you do justice to the dead, do justice also to the living. The dead are beyond your reach and mine; they are standing by a tribunal whose decrees are infallible—where you and I must soon stand, and where all wrongs to them will be righted. But if you do a wrong to those who are living, you do a wrong that will reach down into the centuries. In the name of God, you cannot do this. Of all the calamities inflicted on man insanity has been held the worst—this placing upon a sane man the badge of insanity. Nothing can be more cruel or lasting; it is worse than death, for it is a life of torture. I know that this matter will all come right, and that your true and manly instincts will lead you to the right conclusion. After two months it seems as if we had been here only a day. We have advanced well in life since this trial began. Think how quickly the end comes, and how quickly the seed you sow will spring up; and let it make you patient in deliberation.*

During the progress of the trial, as if to relieve the monotony of a somewhat tedious case, the following spicy contest occurred between the leading counsel, and created no little excitement and press comment. In that loud, clear, ringing voice, in excellent command but a little bitter, Mr. Dexter spoke to the court as follows:

"Mr. Redfield (who had been repeatedly quoted as an authority by the other side) is driven farther into the fallacy of saying that

* This is but a brief synopsis of Judge Chipman's address to the jury, which occupied two days in delivery.

you can determine the validity of the will by taking into account whether it is a beneficent spirit or an evil spirit, and here the gentleman found it necessary to tell us that they shall prove to the jury that Captain Ward, in making his will, was influenced by a malicious spirit. The license of counsel in the opening of this case was unparalleled, and I did not suppose it would be continued on an interlocutory question. Propositions are made that have no more to do with the issues we are here to try than the hymns that are to be sung in the churches of this city to-morrow. They have had one effect, and only one effect—to deeply traduce and grieve my client, a most estimable lady; but she bides the time until she shall present to this jury, sworn to hold their judgment in righteous equipoise, the other side of the case. She stands at the bar of the court with her children and his children, obedient to his last wishes as she was to his wishes in life, and will defend the memory of her husband and children, although stigmatized by his own son. Suppose it should turn out, when we come to the proof, that after a long life of care and ineffectual tenderness for these children, resulting on their part in reckless expenditure, dissipation, imbecility and incapacity for the most part, that the only course left was the wise and last act of his life—to extend the only protection possible to them in making a provision so that their portions could not be wasted. How wicked, how cruel will these things then appear that have been said about Captain Ward and this lady. They will never be heard from again in this cause. They are inadmissible, based on no issue, and have no lodgment anywhere except on the slanderous tongue that uttered them."

MR. ROMEYN: "Do I understand you to apply that language to me?"

MR. DEXTER: "I do, sir. Born in the State of Michigan, and familiar with Theodore Romeyn's reputation as a lawyer since I first, over thirty years ago, went with my father into a court house in the city of Detroit, I am not at liberty to lay at his door a charge of ignorance of law, whatever else may be charged against him; and when Theodore Romeyn stated in the face of this court and jury that he should attack the second marriage of Captain Ward, and show that it was no marriage, and show that this lady had submitted to unlawful embraces, and that her children and his children were bastards, I say that the man who uttered it well knew it had no place in these proceedings. I speak it advisedly, and I am accountable for it here and at all times.'

This occasioned a profound sensation, and Mr. Romeyn, in another speech, alluded to it as unprofessionally discourteous, but in his argument on the admission of the testimony offered, Mr. Chipman made the following as a reply to it:

"We propose to submit this proof to the jury. We propose, above all things, to do it serenely and calmly as if there be no threat or intimation of a threat here. We propose to do it with full consciousness that we are not living in Arkansas. We do it understanding we are living in the state of Michigan, where the duello is unknown, and where gentlemen do not condescend to fisticuffs. And if there are those in this case who wish to invite personal collisions, let them go and find friendly ruffians and brawlers in our streets who will pummel or be pummeled at an instant's notice to the satisfaction of any gentleman who desires it. For our own part, we know there is a law of the land which punishes the man who engages in riots and brawls. We know that the man who fights duels, and avers his responsibility that "he is answerable here or elsewhere," by sending a challenge which gentlemen are expected to send under those circumstances—is sent to the state prison, and disfranchised of his rights. As I said, we are here to enforce the law—not to break it. We are here to try this case serenely, and as God is my judge, I will try it bravely. While I say no discourteous word, as the court and everybody knows, to any man—while I will not turn this court into a scene of wild riot; while I will not introduce here what is unknown to us—plantation manners, and the language which we do not find in courts, but find in places unknown to courts, before God Almighty I will try this case, and if Mrs. Ward has done wrong I will say she has done wrong. I will do if twice ten thousand people stand in my way—if twice ten thousand challenges fall down here. This is all cheap cheap fustian. It does not belong here. I do not want any of it. I am tired of it—sick of it. Let us try this case calmly and serenely—we with our gray heads and old faces—give up this hot blood—hot blood does not belong to us—we are all getting gray and getting old. Let us try it serenely. If the objection is made that we shan't go into this thing for any personal reason that does not address itself to your honor—if vain challenges and cheap twaddle are thrust into my face here, I remember I am the son of the state of Michigan, and live under the laws of that state, but while I say it, as every man within the sound of my voice knows, and I neither vapor nor boast, I don't shrink from any personal responsibility. I don't recognize the right of any man in open court to give a chal-

lenge—to try to intimidate counsel. This is a land of free speech We are all equal in the law, and by the help of Heaven I propose to obey the law, until some man attacks me, and then the law says I may protect myself, and thank God, I will do it as I always have done."

The gravity of Mr. D. Darwin Hughes was aroused in the matter, and he added the following:

I am often pained, your honor, at evidence of bitterness between counsel. The practice of the law is a dignified, high and noble calling. It takes years of patience and painstaking to acquire character in the profession, and I think sometimes that one may say and undo in five minutes that which will blot and blur the work of twenty years.

I am sorry for it; I regret it; I deplore personalities. It goes beyond the etiquette of true brotherhood, and I only add that the heat and worry of the cause, and not better nature of counsel, will engender harsh words, which I hope will pass away; and I know counsel are too generous to hold malice.

Delivered in a quiet and dignified judicial manner, these sentences were strikingly emphatic.

Geo. H. Penniman and Geo. H. Prentis were also counsel in the case, and the latter made a forcible address to the jury.

Some time before court opened the court-room was thickly crowded, scores of people standing in the aisles and along the walls. Hundreds of ladies were present, and the populace crowded hard upon the bar. The venerable Alexander D. Frazer, president of the Detroit bar, was present and shook hands with Mr. Dexter before the latter began his speech. The judge cautioned all to keep quiet, especially those who sat close to the jury, and

Mr. Dexter Opened His Argument:

ON THE TESTAMENTARY RIGHT.

If your Honor please, Gentlemen of the Jury—The right is conceded by common law thoughout civilized countries that a man should dispose of his property as he sees fit. A great American judge has said that old age is solitary, and often the only way in which an old man can command the attention to his infirmities that they merit; is this right of disposition. This right cannot be trifled with in a particular case, and yet be preserved, and you, sit-

ting as jurors, are now to pass upon the right. The chief rule that I should impress upon you is that you should determine the case according to the law and the evidence; not according to all that has been offered or that has been said. You have undertaken the difficult task of rejecting all outside and irrelevant matter, some of which may have found lodgment in your minds. Not only shall such matters be excluded from discussion in the jury-room, but it must not influence you. If cases are to be settled on evidence that is merely offered, courts may as well be disbanded. I shall try to weed out much of what I think is of the character I have described. When I have done so, I think I shall for the most part have answered the contestants. About the last thing said by the gentleman who preceded me was that we were afraid of this jury. Do you remember that they asked that you be excluded from the room on a certain occasion when a law point was about to be discussed? I beg to answer you that he was mistaken when he made that statement. I never had more confidence in twelve men than I have in you that they would do justice.

OUTSIDE ISSUES.

The positions taken by the contestants amount to this, (1) that a man has no right to dispose of his property contrary to the judgment of his neighbors, (2) that Capt. Ward did not dispose of his estate as you would have disposed of it if you had been in his place. But the senior counsel for the contestants had already acceded to our request to charge that every man has a right to dispose of his property as he pleases, so long as he does not interfere with the legal rights of others. I have marked out what I believe to be misstatements of the law by my opponents. I may do this in a somewhat rambling manner, because I shall speak of them in the order in which I made memoranda of such hints as they were brought forth. You will remember that on the three days upon which my immediate predecessor spoke, he closed his argument each day with an implorative that you do not brand the sons of the testator with insanity. There is no such issue in the trial. Ought he not to have known it? Is it not true that these boys might be insane and the will broken, or sane and the will sustained? Suppose the jury should find them incompetent business men, and based their verdict on that conclusion, do they stamp them with insanity? Yet counsel thought it necessary to appeal pathetically and excitedly to your feelings in an extravagant manner on this ground, a ground that must be rejected from the case. Much of the first day occupied by the same gentleman was spent in showing you that

Capt. Ward was a spiritualist. Has that been denied? It was decided by the court five weeks ago that that fact was of no significance, unless connected with something else in the way of an undue influence. But the theory of their case was that spiritualism had so weakened the mind of Capt. Ward that an artful lady had made it the instrument of working upon Capt. Ward to obtain such a will as she wished. But there is no evidence in the case to support that theory. All that long day and a half of ghost stories and sensational pictures has no place in the case. I shall show you where the vile creatures who have come here as witnesses to break the will of Capt. Ward have come from. I shall show that they have been bought, and who bought them. I join heartily with the gentleman in his denunciation of them as stale necromancies and lies from tophet! Counsel have asked you to notice what an aristocratic set we are. He has referred to the presence of James F. Joy, and the money kings of the Second National Bank, and has asked you to consider what debt the estate owes that institution. He might as well have made any other institution. What evidence of any debt was there, and if there were any, what had it to do with the case? How could it affect the debt to sustain the will? There have been appeals to you on the proposition that we were oppressing the poor. I have heard such rhetoric before an infuriated crowd of communists who wanted somebody else's property, but never before in a court of justice. In commenting on the witness William Harvey, counsel brought in allusions without support. They have talked to you about the dead Mrs. Ward; in what way can she be connected with the case? They tell you certain facts can be proved by Lewis' letters, of which he brought great quantities to the witness-stand, but they examined these letters and left them untouched, without bringing them into the case. They said Mrs. Ward indulged in a spiteful manner and improper expressions to Kitty Coyle. They are hard to please. If she had remained silent they would have said she was smitten with guilt. What she said was an honest rebuke for which she might be pardoned. And yet counsel have put words in her mouth that are absolutely and unqualifiedly false! She has been the target of abuse; she has had a hard place in that household! The counsel found it necessary to ridicule Aunt Emily, based on another misstatement. She needs no defense at my hands—she who is universally known, beloved and revered. Counsel said he had never heard of her before this case, and followed it up by saying that she was malignant and malicious, and that she hated the boys—she whose whole life has been one of gentle ministration, and has grown old among the

blessings of children not her own. They say she is in this case prosecuting a claim. There is another misstatement. How do they speak for Mary Ward? Her guardian comes and refuses to let her stand among the contestants. Is not his judgment as good as Milton's as to her capacity? We have had to make a full showing as to the condition of the whole family. Aunt Emily testifies to apprehensions on the part of Capt. Ward lest she should become insane. She had got to feeling, two years ago, as if she was being constantly followed. Was not that a remarkable delusion? It was our duty to place it before you.

Capt. Ward did what a sensible man would do in furnishing his children with guardians. He took for the infants their mother, and for the others grown men who were his confidants. An unfortunate attack has been made on Mr. Owen, one of these trustees. He tells you how it happened that he received the largest sum of the four executors. It was because he released a claim he had for an interest he lost by Capt. Ward's death. And this lady was present and consented to the agreement. Counsel say he artfully drew the will so that his nieces and nephews might be provided for. That has been reiterated here, under the authority of Lord Brougham, eight or nine times. It is untrue. The only thing that Owen did do, and he did it by Capt. Ward's direction, was so to provide for the nieces and nephews of the captain that in a certain contingency the two children of the present Mrs. Ward would be cut off from a part of the inheritance. Does that look like a conspiracy between herself and Owen?

MISREPRESENTATIONS.

It is not only that facts have been asserted against us that do not exist, but qualities of character also. They have put forward false inferences. They say this lady is mercenary. They say the expenses of this suit on our side amount to $30,000. I do not know how they got at the facts. Mr. Prentis complains that we have not more Detroit lawyers. I thought I had the right to ask for the help of my old-time friend, Mr. Hughes, who tried causes before Mr. Prentis ever looked into a law book. But there might have been more Detroit lawyers in the case. There might have been one of the most distinguished and upright members of the Detroit bar taking part in it, if he had not left it. Every one knows that I speak of Hon. George V. N. Lothrop. His absence and silence speak more loudly than the voices of them who conduct the case in his stead. They say Mrs. Ward is mercenary. She offered to the children $200,000 out of her own share to save

this scene—$165,000 more than the sum they say it costs her to try the case. Does that look mercenary? Name one disagreeable feature in the case which they brought in; not one. The question of Fred's insanity and the wreath-picture in illustration of it; disgraceful incidents in the life of Milton Ward and the parentage of the children who are now in the care of Mrs. Deming in Ohio. You remember their wicked story that Fred had killed himself because of the charge of his illegitimacy, when it appears that he killed himself through self-indulgence in laudanum. Kitty Coyle said the captain refused Fred money and charged him with not being his son, when we know that with a magnanimity greater than that of most men, he gathered the boy to his heart and treated him as the other children were treated.

Now, as to the property. I want to know if there is any worse property than 60,000 acres of pine land with homesteaders settling upon it. They say the stocks have depreciated. They have been rising in value ever since Captain Ward made his investure, which was just after the panic. The other side didn't dare ask Hagerman what the mills were doing at Milwaukee; they had the officers of other establishments and did not dare ask them as to the condition of the property in their charge. But the counsel tell you in a general way that Ludington is all there is of it. Now, let me get your attention to the figures. The estate is in good condition, has good credit, and has paid its debts as fast as they became due. Counselor Chipman says the stocks left in the will of 1873 to Mrs. Ward were subject to payment of debts, and there was a great deal of difference between that and Ludington. That was a brilliant financial idea. *All* the property is subject to the payment of the debts. But they summoned us to produce wills, and being satisfied that the will of 1873 could not be found, they thought they might charge anything upon this lady. I will show you what these conspirators have contrived, and how testimony has been manufactured. Consider the facts as to the relative estates that Mrs. Ward would receive under the will, or without the will.

Under the will of 1874, she gets two mills at Ludington, $20,000; pine lands, $720,000; four barges, $66,000; lumber, logs, etc., $100,000; one-third of the home library, $550; one-half of the household, $5,000; total, $1,092,000. Without the will she could take $1,455,000 without dower; that is, she and her children lose, by the will, $363,000. Is she mercenary? These facts cannot be controverted. First she offers $200,000 to prevent this trial, and then she meets the attack in obedience to the wishes of her husband. What would you think of your wife compromising and

trading over your grave with regard to the property you had left her? Yet they seek to show that she is animated by mercenary motives.

Are we here in a court of justice to traffic about the right to make a will? Of what use is the right, if this can be done? The question is not what would be a good trade—not what might be done—but what did Capt. Ward do, and what was his last will, and whether he had capacity to make it. The will of 1873 is the one that they could not find on the other side, and which was never brought in till Kane and Slade had left the stand. It is the will which they would have you believe Mrs. Ward wanted to destroy; the will which gave her $250,000 more than the present one. Let us look into the conspiracy, however. Slade comes here and lets you know that he could be brought here to act as a witness for $2,000. He is a wart, an excrescence—a pitiful huckster who sits on the temple of justice waiting to be bought. They say that Mrs. Ward went to New York with Crabbe, and visited Slade, and that he called her "Kate," as she came into the room, and they dwell on that with dramatic effect. But Crabbe tells you that that incident occurred with Mansfield, and thus their whole story falls through. They say that Capt. Ward was influenced with regard to Milton, and that he put him there in charge of an immense business in a bad time when he had no right to expect him to succeed. The time during which Milton was there was the most favorable for the lumber business for the past ten years. They say Ward and his son Milton were friends to the last hour. To be sure they were! And the strongest mark of this friendship was the last will. Charles became bankrupt to the amount of $26,000. It won't do to indulge in general statements that his father was trying to speculate on him. He would have been glad to have left these boys as his successors. He himself went about the country attending to his gigantic business affairs, while Charles was going about in a gig with a fast horse before, and a blanket streaming behind, to attend races. He left the Black Swamp and Milton left Ludington. The hopes of their father were crushed out; he was disappointed.

At twenty minutes to four Mr. Dexter closed for the day. Two or three times his voice, which is usually clear and ringing as it is powerful, failed him a little and became hoarse with a threatening attack of quinsy, the speaker feared. He availed himself of the judge's suggestion that he might defer the remainder of his argument until another day.

I wish to say a word as to the religious faith of Capt. Ward. It is not strange that one should wish to peer into futurity. We clutch at a glimmer, however small. The evidence here shows Capt. Ward and Jacob M. Howard both had their attention called to Spiritualism and investigated it. I once thought Mr. Howard one of the elemental powers, so great was his intellect. To him you entrusted the high office of Senator. Ward, by his own efforts, rose to such prominence that, when he fell, commerce paused to record his services. But the belief is one that ought not to enter into an element to prejudice your deliberations in this cause.

The will is said to have been made under the influence of spirits. But the codicil, made six months later, is not claimed to be so executed. And there are other bequests. If you break this will, you set them all aside. Here are fifteen separate bequests in all. Have you any right to interfere with the rest of them? What is to become of little Mabel Ward? What of Aunt Emily? I hope that, in the last hours of inconceivable solemnity, we may each have a record like hers. For this trial has given me a living realization of the good aunt that we read of in fiction when boys. I never expected to see it realized. But here it is; I have seen it in this noble-hearted, motherly woman, faithful to the end of life and long beyond; for her the wise, the prudent forethought of a loving brother has made this just and abundant provision. And you are asked to strike them down together, with the rest. But you will not; you cannot, from any evidence given in the cause. I submit, in all candor and reason, there is no evidence to set aside this will.

After an eloquent closing, the case was given to the jury, who failed to agree, standing three for the will and nine against it. A compromise was made, which closed the contest.

THE BRINKLEY CASE.

New York, June, 1873.

This case created no little excitement at the time, owing to the wealthy defendant and handsome plaintiff. Mrs. Brinkley had been an actress from New Orleans, whose rare personal charms attracted the attention of young Brinkley, while heir-expectant to a large estate; he won the affections of the plaintiff and arranged a marriage while they were both boarding at the same hotel. The ceremony was performed by a supposed minister, and the usual bridal trip taken, and on returning to the hotel they occupied rooms, and lived as man and wife—calling each other such—and had two children. After the death of Brinkley's father, and the change of fortune, he refused to longer own his marital relations, claiming the marriage was a myth, and suit was brought in one of the supreme courts of New York for heavy damages.

THE HON. WILLIAM A. BEACH.

In his argument for the plaintiff, Mr. Beach grew eloquent and at times extremely powerful over the mock marriage and the defendant's conduct. It had been urged with force that the marriage was void *ab initio*.

A single paragraph will show his style of reply:

"Evidence of marriage;" may it please your honor, what is evidence of marriage? Why, living together, may it please your honor; cohabiting together, may it please your honor; introducing each other as man and wife; walking in the sacred relations as such; rearing up children together, may it please your honor, that going down into the valley and shadow of death that a wife assumes in such relations; and for all these they were married; they were married when he enjoyed the bloom of her youth and loving tenderness; married when he drank deep of her heart's young affections; married when it flattered his fancy to control her beauty; but when we come to that after-stage of life, where the fire and fervor fade from the eye, and age comes stealing over the features and dims their brightness, when, of all times, marriage is to life most sacred, when they should be leading each other hand in hand down the western slope of life's steep hill, to rest together at its foot in a long repose; just as they entered on that

sacred journey, *then it is that this monster of humanity seeks to cast her off, and bastardize her children! Not married! Not married!* WHO, THEN, IS MARRIED?

The delivery of these words with a rising inflection with increased intensity, a flashing eye, a trembling lip, a withering look, a voice of power and penetration, seemed to fairly jar the building. It was a strong burst of irony, that utterly annihilated the defendant's theory, and the bonds of matrimony were welded and cemented so firmly together that judge, jury and spectator felt like saying, *of course they are married.*

Jury gave $15,000 damages.

THE TRIAL OF BEECHER.

Trial in Brooklyn, January, 1875.

The history of this singularly interesting trial, that held the public interest of two continents for nearly thirty days, is a volume in itself. Brief notes of facts, incidents and arguments, from the public journals, are all that space will permit in this connection.

The length of time occupied, both in the trial itself and the delivery of arguments by the distinguished advocates, precludes more than a mere mention of some salient points, for reference to the five original volumes of the reported case in New York. It is by far the most celebrated jury trial in America for the past half century, and every part of it could be studied with profit and advantage. Even did space permit a full report of the eloquent and able arguments made, they are too voluminous and elaborate for the general use of jury practice.

"Whether we regard the nature of the issue, the character of the parties, the eminence of the counsel, or the dramatic incidents of the trial, the case of *Theodore Tilton v. Henry Ward Beecher* must be regarded as one of the most remarkable in the history of jurisprudence. Its interminable length has been made the subject of many complaints; but no case so complicated was ever pushed to so speedy a trial. The charge of adultery was first publicly preferred against Henry Ward Beecher in the month of July, 1874.

The complaint in the case was served in the following August. Issue was almost immediately joined, and trial was commenced in January, 1875, within less than four months after the leading counsel had been retained. the trial of the case has occupied a considerably longer time than was consumed in the previous preparation for it. It relates to transactions extending over a period of five or six years. Over 250 documents were made the subject of searching inquiry and analysis, and the proper interpretation of many of them requires no little amount of *parol* testimony. Over 100 distinct interviews are the subject of inquiry, and in respect to many of them the sworn testimony of the witnesses is in direct and irreconcilable conflict. The published testimony, printed in fine type, fills 3,000 foolscap pages; the report of the proceedings will fill four or five large legal volumes. The legal questions involved are numerous, complicated, difficult, and, to the professional mind, interesting. Over 150 distinct rulings of the judge on points of law, during the progress of the plaintiff's case, were noted and digested by the defendant's counsel, and probably the number of questions raised and decided during the defendant's presentation of his case were quite as numerous.

Nor has anything been wanting to lend dramatic interest to the trial itself. The counsel employed are among the most eminent at the American bar. On the one side Mr. Pryor, a man of large erudition and of a marvelously alert mind; Mr. Fullerton, deservedly famous as an adept in all the arts of cross-examination; Mr. Beach, a pungent and powerful speaker. On the other side, Mr. Tracy, a fervid and impassioned orator; Mr. Porter, who maintains in the advocacy of a case the calm and judicial habits of mind borrowed from his experience on the bench; Mr. Austin Abbott, pre-eminent at the New York bar for his legal learning, and known widely beyond it by his legal publications, and whose forecast and system have been conspicuous in the orderly presentation of the defendant's case; and Mr. Evarts, who to a reputation already established as an acute and learned lawyer, has by his conduct of this case added that of a master of the entirely distinct art of advocacy before a jury. Every phase of character, too, needed for dramatic effect has been represented on the witness stand. Mr. Moulton, sharp, shrewd, calmly confident; Mr. Tilton, oratorical and fluent; Mrs. Moulton, quiet, timid, shrinking; Kate Carey, the discharged servant-girl, the very ideal or "the greatest plague in life;" Bessie Turner, pretty, keen-witted, plain-spoken, animated and dramatic in her direct examination—in her cross-examination a match in repartee for the lawyers; Wilkeson, a curious com-

bination of the newspaper and the railroad man, in exterior apparently a gentleman of the old school, in actual character a product of the very newest—the spirit of 1875 in the dress and mien of 1800; Mr. Claflin, in physical and mental characteristics a fine representative of a modern merchant prince; Mr. Redpath, who recited his story as one who had come out of a cloister, and brought with him the remembrance of an almost forgotten dream; Mr. Cowley, the Lowell lawyer—when Greek meets Greek, then comes the tug of war; Mrs. Ovington, in the clearness, the frankness, and the simple-heartedness of her testimony an almost ideal witness; and last, but not least, Henry Ward Beecher himself, reciting his story with an imposing and dramatic eloquence that compelled alternately laughter and tears from the audience, and the natural though indecorous applause which the sternest efforts of the judge were unable entirely to suppress.

Day after day the court-room was thronged to its utmost capacity, and its doors besieged by clamorous applicants unable to gain admittance. Day after day the room allotted to counsel and reporters, and even the judge's bench, was invaded by clergymen, literary men, judges, lawyers, members of Congress, ex-Governors, some of them coming from as far north as Maine and as far south as Virginia, to look upon this extraordinary spectacle. The newspapers flung their doors wide open to a larger audience, and day after day surrendered whole pages of their issues to a *verbatim* report of the proceedings. These *verbatim* reports required a corps of writers of from ten to twenty on each of the larger newspapers, and required on each, in reporting alone, apart from the cost of printing and paper, an average expenditure of $100 a day.

None of the ordinary explanations of human conduct afford a key for the solution of the problem presented by this case. The crime of which Mr. Beecher is accused is, indeed, the unhappily too common one of seduction. But the accusation preferred against him is not that of falling, under a sudden impulse of passion, into a sudden and quickly repented of crime. He is charged with using the persuasive powers of his eloquence, strengthened by his religious influence, to alienate the affections and destroy the probity of a member of his church—a devout and theretofore pure-souled woman, and the wife of a long-loved friend. He is charged with continuing the guilty intercourse during the period of nearly a year and a half, of cloaking the crime to his own conscience and to hers under specious words of piety, of invoking first the Divine blessing on it, and then Divine guidance out of it. He is accused of resorting to the most unscrupulous measures, first to crush his

accuser, the indignant and outraged husband, and then to secure his acquiescence and co-operation in concealing the crime from the public. And, finally, he is accused of adding reiterated and monstrous perjury to seduction, in order to escape the just consequences of his infamous conduct. If the accusation preferred against him is true, he is not merely weak and wicked, he is the basest of men. And this charge is preferred against one of the most eminent of Christian preachers; whom the bitterest enmity has never before charged with being guilty of falsehood or prevarication; one whose chiefest fault has hitherto been thought to be his culpable outspokenness. On the other hand, this charge is preferred by two men whose characters and station forbid us to classify them with ordinary conspirators and black-mailers. If the case is one of conspiracy, it is a conspiracy which has no parallel in the annals of the past. Black-mail is levied ordinarily by irresponsible and anonymous blackguards. The accusers in this case are persons of public reputation and honorable station in life. Mr. Tilton is known to the public as a brilliant though erratic editor, a respectable poet, a popular lecturer, and an effective stump-orator; Mr. Moulton as an active business man, and a member of one of the largest and best-known firms in their peculiar department in the city of New York; Mrs. Moulton as a lady to whose purity and truthfulness, prior to the events connected with this trial, both the defendant and his counsel bear willing testimony; and Mr. Tilton, Mr. Moulton, and Mrs. Moulton all swear to confessions by Mr. Beecher in absolutely unmistakable language.

Thus both parties to the suit were really on trial: Mr. Beecher for seduction of an extraordinary and unparalleled character, and Messrs. Tilton and Moulton for defamation, conspiracy and black-mail of a character no less extraordinary. * * *

There were money difficulties. Mr. Tilton had a good income, but he was a free spender. "I was always buying," he says, "costly things to beautify my house—pictures, books, furniture, and other luxurious frivolities which rich men can indulge in, and men who are not rich can not." The consequence was that there was not always money to buy coal for the fire nor dresses for the children, and Mrs. Tilton was lectured, according to the mood of her husband, for parsimony to-day and for extravagance to-morrow. Stories were rife that Mr. Tilton more than once carried out in practice the views respecting social freedom which he advocated in public. If any reliance can be placed upon his letters, he was not wholly faultless in this regard. The separation between husband and wife was a growing one. An eccentric mother-in-law,

with an unhappy temper and a fierce tongue, did nothing to mend matters; Mr. Tilton's eccentricities aggravated them. He had sleepless nights, and amused himself by going about the house in his night-clothes re-hanging the pictures on the walls, or going from bed to bed, driving out the previous occupants, until he could find a couch to his liking. He began to look down upon his wife as a woman excellent in her way, but intellectually below him, and on more than one public occasion noticeably slighted her. That he was violent in his language in the home circle seems to be indisputable; that he was violent also in action is solemnly sworn to. His wife was a sensitive, shrinking, and somewhat morbid woman, idolatrously loved and revered her husband, accepted meekly his estimate of her abilities, and had not the strength to resist, nor the tact and skill to lead him. But, as in many another home circle, nothing of this transpired before the public. Outwardly there was a busy man, a loving wife, a peaceful home; only to the inmates of the home were these secret unhappinesses known. Their chief revealer is the young lady known as Miss Bessie Turner, a kind of adopted daughter of the Tiltons.

So when, in December, 1870, Miss Bessie Turner came to Mr. Beecher with the statement that the idolizing wife had left the idol, and with the request that he would come and confer with her at her mother's, though as pastor he had known something of the growing estrangement, he was greatly surprised; and when he came to hear her account of the reason, his surprise was deepened into a wondering indignation. Miss Bessie Turner assured him that Mrs Tilton was worn out with ill treatment, which she had borne with patience until patience had ceased to be a virtue; she declared that she herself had suffered the insults of the husband; and the occasions were narrated with some particularity. Her account was confirmed by the statements of Mrs. Morse, and by the acquiescing silence, rather than the accusing words, of Mrs. Tilton, Mr. Beecher hesitated what advice to give; consulted with one of the deacons of the church and with his wife; called with her on the following day; and, acquiescing in their judgment, finally counseled a permanent separation. The estrangement between Mr. Tilton and his former pastor was now complete. Mr. Beecher had done that which it is always dangerous, even if necessary, to do—he had interfered in a domestic quarrel; and he had counseled a separation which, if it were consummated, must inevitably add to those public criticisms from which Mr. Tilton was already suffering.

Mr. Tilton instantly took his resolution—a twofold one: first,

to recover his wife; second (we quote his own language), "to strike Mr. Beecher to the heart." * * * *

The statement of the defendant's case by Gen. Tracy was a long and labored argument, as Thomas Nast aptly said, in "painting Mr. Tilton black to make Mr. Beecher white."

The conduct of Mr. Shearman, as a brother church-member and private counsel for Mr. Beecher, was irritable and at times captious, but left no lasting impression on the jury to increase the chances of acquittal.

The cross-examination of the witnesses by Judge Fullerton was critically severe and continued at great length, and considered the best ever sustained in this country. But the climax in this branch was only reached when Mr. Beecher himself testified, and was questioned by the master cross-examiner, in that rapid, exhaustive and ingenious method peculiar to that counsel.

Judge Fullerton, as a cross-examiner, has few if any equals in America. His rapidly-repeated questions to both Mr. Moulton and Mr. Beecher, his sallies of wit, his aptness in discussion of evidence, his wonderful analysis of every word in important testimony, elicited much comment and general praise throughout the country. He would begin by a general question, and being well supplied by both direct answers to questions and copious notes, would follow on for hours on a single theme. Space will not permit even an abstract of the evidence, but the general tenor appears in the argument of counsel, and a single day's *resume* from the press will suffice:

Mr. Fullerton returned to the question as to whether Tilton had charged improper proposals. Mr. Beecher, after a night's reflection, still held to the theory that Mr. Tilton had merely carried charges made by his wife. The word "charge" had been used on the direct examination merely as a synonym for "declare," "narrate," or "state." Then Mr. Beecher said that in his letter of disavowal to his nephew, Mr. Perkins, he never intended to embrace the Tilton charge. Next in order of consideration came the *piece de resistance,* from which so much was expected—the "ragged edge" letter. Mr. Beecher went over the events antecedent to writing that letter substantially as on the direct examination. Mr. Fullerton wanted to know why Mr. Beecher had not made an explanation to the church if he was innocent. He answered that he was keeping his part of the compact of silence. He did, and he did not believe the others were keeping their part. [Laughter.]

Judge Neilson ordered Sergt. Roger to remove from the court room any person caught offending.

"Except the counsel," said Mr. Fullerton.

"Except the counsel,' repeated his honor, gravely, and there was another titter. Almost immediately afterward counsel and witness had a spat which caused the audience to offend again. Mr. Fullerton was pressing a question and followed it with a remark, that he was going to find out all about these things before he got through.

"I don't think you are succeeding very well," retorted Mr. Beecher.

The questioning was sharp in regard to the "keen suspicions" clause. The keen suspicions, Mr. Beecher said, were rumors prevalent in his congregation in regard to the Bowen scandals. The Tilton matter was not in his mind when he wrote his "ragged edge" letter. He considered that if these scandals were investigated the Tilton troubles would come out; and, furthermore, that a Congregational church was the worst tribunal before which an investigation could be had. The point of his proposed sacrifice was to restore happiness to Tilton's household. The contest was here extremely exciting. Mr. Beecher braced himself up, and question and answer flew back and forth with sharpness and rapidity. Mrs. Beecher smiled approval from her seat.

"Was there no person in your congregation to whom you could go for counsel?" said Mr. Fullerton.

"Not one," said Mr. Beecher, with emphasis.

"It is well to know it," retorted Mr. Fullerton, and the letter was dropped.

The next subject taken up was the "true story." Mr. Beecher said that Tilton told him, before reading it, that there was one clause which, if he could stand it, he could stand the whole, referring to the improper solicitations clause. "I thought so myself when I heard it," added Mr. Beecher, demurely. [Laughter.]

"Why did you not rise up and deny the charge?" thundered Mr. Fullerton.

"Mr. Fullerton," answered Mr. Beecher, grandly, "that is not my habit of mind, or my manner of dealing with men and things."

"So I observe," said Mr. Fullerton.

The letter to the *Eagle* and the letter of declination were then gone over. Mr. Beecher said he had not seen the latter letter after it was drawn up, but he corrected himself subsequently, when it was shown that in his long statement to the committee he spoke of having it in his possession. Then the interview with Mrs. Moulton was taken up. Mr. Beecher said he did not lie down that morning

on the sofa or "on anything else." Previously he had often lain down in Mrs. Moulton's presence. He was very positive that the kiss of inspiration was given while he was sitting at a table. He acknowledged that he had suggested to counsel to ask Mrs. Moulton while on the stand about the kiss.

There was a sharp examination on the subject of calling Mrs. Moulton "a slice of the day of judgment." Mr. Beecher wanted to qualify his answers, and Mr. Fullerton insisted on stopping him. At length he said that he would swear positively that he did not make use of that expression, but would not be positive as to whether he had said something akin or not. With a series of flat negatives, he denied that he had ever had any conversation with Mrs. Moulton in regard to a confession or statement to the church. His proposed resignation had no reference to the West charges. He disposed of the sentence in his letter to Moulton that "neither you nor Tilton should be troubled by the side you have taken in public," by saying that the last word was not "public," but "politics." At this there was a flurry among counsel, and the letter was passed around and closely scrutinized. This interpretation was finally accepted. Mr. Beecher did not tell Brother Bell to break up the deacons' meeting. What he feared in regard to the women was that they would talk too much. He had never heard the third specification of the West charges. The answer almost knocked Mr. Fullerton over with amazement. He made Mr. Beecher repeat the denial three or four times, and, as a climax, asked him:

"You say that Theodore Tilton's charge of intimacy with his wife and the charges made by your church and by the committee of your church made no impression on you?"

"Not the slightest," answered Mr. Beecher, shortly.

Mr. Beecher dodged the question for some time, and Mr. Fullerton became angry. Mr. Shearman popped up to his client's aid, but Mr. Fullerton declined to yield the floor, and the two lawyers talked together for some minutes amid general amusement. Finally, Mr. Shearman, angrily remarking upon the insolence of counsel, sat down. Mr. Fullerton said that he could be corrected by the witness if he had quoted wrong. Mr. Shearman sprang to his feet again, and said that it was a singular coincidence that when counsel had not the record before him he never quoted correctly.

Mr. Fullerton retorted that when Mr. Shearman was not impertinent he was not anything.

Judge Neilson interposed with, "Probably counsel thought—"

Mr. Fullerton interrupted to say that what Mr. Shearman thought

could not possibly be of sufficient importance to take up the time of the court or his time.

Subsequently, when Mr. Beecher said that the idea of blackmail had been given him by others, Mr. Fullerton stopped him with the remark that he did not want to become involved in another controversy with Mr. Shearman.

The blackmail business continued to be the subject of some very sharp questioning. Mr. Beecher said that he did not get that idea until his return from the White Mountains. He did not know which of those with whom he talked had convinced him that there had been blackmail.

"Well," said Mr. Fullerton, "name them, and we will divide the honors."

"I think Mr. Shearman will have to bear his part," answered Mr. Beecher, laughing.

"I thought so," remarked Mr. Fullerton.

"Gen. Tracy was another," continued Mr. Beecher.

Here Mr. Fullerton interposed a significant "yes."

"They told me I was green," said Mr. Beecher, in a tone that gave rise to loud laughter.

"Do you now believe that Mr. Moulton blackmailed you?" thundered Mr. Fullerton.

Mr. Beecher tried to avoid the answer, but finally said, "I am afraid he did."

Mr. Beecher could not recollect a walk with Mrs. Tilton in New York in the fall of 1871; nor whether he had been in an oyster or refreshment saloon with her in 1871 or 1872. He never admonished her not to allow her affections for him to go further, although he was at the same time laboring under a strong conviction that she had transferred her affections to him. He hoped to influence her by his moral conduct, not by warnings.

The subject of paying for Bessie Turner's schooling was then considered. The money was given through kindness, and not under a threat or suspicion of blackmail.

The connection of Gen. Butler in the case was then gone into. Mr. Beecher smilingly repeated the assurance that had been given him that Gen. Butler would "draw him out of this thing no matter what the facts were," whereat Mr. Evarts shook with suppressed laughter. It was preposterous to say that witness had ever likened Gen. Butler to Moses, and he gave an emphatic "No, sir," to the question as to whether he had said that the General was a great man—a man such as God Almighty permits but one or two to be born in a century. Again Mr. Evarts was convulsed, and a general

laugh went round. Witness had not sent a messenger to General Butler. One had gone as the result of a consultation, and he [Mr. Beecher] had approved of it. No report was made to him only as to the result of the mission. It was Gen. Tracy who was the messenger. Witness never wrote to Gen. Butler, and could not recall saying to Mr. H. A. Bowen that Gen. Tracy was his counsel at the time. Gen. Tracy was not his counsel, merely his adviser.

The next subject was Mr. Beecher's walks with Mrs. Tilton after the outbreak of the scandal. Two were described. Of one Mr. Beecher was not sure of the distance. Mr. Fullerton insisted on knowing it. Mr. Beecher responded that he was not a surveyor. "It was less than a hundred—" "What?" "Miles!" answered Mr. Beecher. He got it down finally to four or five blocks. He had never been in Sarony's photograph gallery in New York with Mrs. Tilton.

As Mr. Beecher stepped down from the chair he accosted Mr. Fullerton, and inquired about his health. The great cross-examiner replied courteously that if the trial should ever end, he would then follow Mr. Beecher's example and go to his farm for a long recreation.

Mr. Beecher repeating that he did not get the idea of blackmail until October, 1874, was confronted with his previously-made statement in which he charges blackmail. First, there was a sharp contest on the statement itself, Mr. Beecher refusing to acknowledge that it was *his* written statement, because a stenographer had written it. Then he explained that his idea that he had been blackmailed was very fluctuating. Sometimes he believed in it, and more times not. He wrote the statement during one of the periods when he believed. "It was periodical, I suppose," remarked Mr. Fullerton, sarcastically. "No; not quotidian, exactly," responded Mr. Beecher. "Did it wax and wane with the moon?" asked Mr. Fullerton. The reason witness had not done justice to Mr. Moulton during his periods of disbelief was that he had the fear of his lawyers before his eyes.

"Are you in the habit of having your sermons published?" asked Mr. Fullerton. Mr. Beecher acknowledged that he was, and also that he had preached a sermon on "The Nobility of Confession," on October 4, 1868. "I hope Mr. Fullerton is not going to preach us a sermon," sarcastically remarked Mr. Shearman. "I would do so if I thought I could convert brother Shearman," retorted Mr. Fullerton. "I will be happy to give you the use of my pulpit," said Mr. Beecher. "Brother Shearman is the only audience I will want," said Mr. Fullerton. "Perhaps he is the only audience you

can get," rejoined Mr. Beecher. "If I succeed in converting Brother Shearman I will consider my work as a Christian minister complete," said Mr. Fullerton. This contest of wit created much merriment. Mr. Fullerton then read a passage from the sermon, the effect of which is that if a person commits a great sin, and the exposure of it would cause widespread misery, such a person would not be justified in confessing it, merely to relieve his conscience. Mr. Beecher said that that was sound doctrine. At this point Mr. Fullerton turned to the court, and pointing to the clock, said, "Nothing comes after the sermon, I believe, but the benediction." His honor took the hint, and at 3.55 the proceedings adjourned.

A fine point of practice was won by the prosecution when the court overruled defendant's motion for a bill of particulars. The arguments on this motion were extremely elaborate. Mr. Shearman's own words, in his published work, were quoted with force against such a bill and referred to as excellent authority.

But the real *duel of giants* with the weapon of words, was fought by Mr. Evarts and Mr. Beach, in their closing arguments. Never before in any country had counsel such an audience. Every word was telegraphed across the continent; every incident caught up and magnified, and it became the breath of the republic through the champions of each respective side. When Mr. Evarts scored a point the Beecher side applauded from Maine to Mexico. If Mr. Beach made a capital hit, a ripple of applause passed rapidly over the other side, each time exciting more intense interest in the general result and making an agreement of the jury daily less and less probable. The final end attained being but a reflex of public sentiment, for no community agreed on the guilt or innocence of the accused.

The sentences of Mr. Evarts, so long, so powerful and so elaborate, are impossible to comprehend by any sketch or brief description. He is a tall, slim, spare man, whose flesh seems but a scant covering of a mighty mind and the wiry muscle of an intellectual athlete. In delivery, his volume of words is inexhaustible. He lacks that freshness of language that comes of a less liberal education later in life, like General Schurz or General Garfield, whose newer words and terser sentences are more striking to the mind of juror or listener. But his deep, classic reasoning is never lost on an audience like the one that attended in this celebrated case. Beginning with the graphic allusion that he wished for the eyes of Argus and one hundred hands of Briareus to see and unfold all the testimony before the jury, he rapidly sketched the history of the case, explained the defense, analyzed the evidence and argued

extensively on the great boyish, confiding and charitable heart of Mr. Beecher. During his long and elaborate address, no unkind word, no bitter thought escaped his lips, but with a splendid array of facts and circumstances, he held up the defendant as a genius of wonderful attainments and rare good nature, generous to a fault, confiding and trusting long after he had been betrayed into bad fellowship. In closing, his appeal was most touching and powerful. The whole address was a masterly, able and brilliant argument. But the climax was reached with the eloquent closing argument of

WILLIAM A. BEACH.

He had not uttered a dozen sentences before the whole audience was electrified by his thrilling style of language and delivery. He was clearly the head of the great combination of advocates.

Mr. Beach is large, tall, well built, courteous and dignified man, with the air and manner of an Englishman, but the fire and fervor of a western orator. Now over seventy, with an erect, graceful carriage—a Chesterfield in appearance. Smoothly shaven, full, fair face, save a slight imperial beard; quick, flashing, gray eyes; clear, impulsive and powerful in delivery. He is able and determined in debate, and warmly attached to his clients' interests. His argument was a full history of the case from end to end, ably assisted by R. A. Pryor and Judge Fullerton, amply supplied with manuscript, and full as a fountain of the facts in the suit.

He began by saying his esteemed and eloquent brother (Evarts), "had wished for a hundred hands and a hundred eyes to unfold and behold the testimony and place it in a fit light before the jury. His brother had had even these great wishes gratified, for he had not only the hundred hands of Briareus desired, and the hundred eyes of Argus, but the gold of Midas, to carry out the defendant's slightest wishes in every important particular."

This side allusion to Plymouth Church created no little sensation and at once placed the whole country on a tiptoe of excitement. Striking out boldly into the marrow of the case, Mr. Beach gave an exhaustive reply to Mr. Evarts, and, with his determined and energetic manner, his rare skill as a linguist and debater, his pathos and magnetic eloquence, made a solid wall of facts and circumstances to uphold his position. At times he grew husky and weary; again, with eyes swollen and heavy, and voice low, even to a whisper, the scene was intensely dramatic. Once, he lost his temper a moment with the foreman of the jury, who gave a curious sneer at a sentence,

and addressed the juryman by name, and in an emphatic manner directed him to remember his oath to try the case without prejudice. This attack welded Mr. Beach's friends on the jury so firmly together that they took sides, and a disagreement became an accomplished fact. This was all that could be hoped for in a case of such extreme length and differences of testimony; so that, what may at first seem injudicious—a quarrel with a juryman—proved to plaintiff's advantage in preventing a defeat. Nearing the close of the trial, and for the second and last day, the court scenes were supremely eloquent and impressive.

Mr. Beach was cheered when he entered the court-room, when he went out, and even at recess. The ladies shared heartily in the hand-clapping and applause, and were frequently heard to say, "O, did you hear that? Listen! It's grand!"

His closing sentences were truly sublime, as he pictured the temple of justice tried by the turbulence of passion:

We have stood together before this community, animated by a common object, seeking after the right in honest sincerity. The distempered plea of turbulent passions has been against the altar at which we serve. The boisterous interests and sympathies of an interested people have tried the firm foundation of this temple, but the spirit of justice sees nothing of the tumult, hears nothing of the uproar. Calm and confident, she leans trustingly upon a juror's oath. Your consciences uphold the shaking temple and the tottering altar. If they weaken and fail, if *the* strong pillars of honesty and truth give way, temple and altar and God sink to a common ruin. The struggle this day is between the law and a great character and a great church. If the latter triumph, and the law is trodden down, woe unto him who calls evil good, and good evil.

No man venerates more profoundly than myself the magnificent genius of this defendant. His large contributions to the literature of the times excite the sentiment of which Macaulay spoke in his essay on the Life of Bacon. Rich as he is in mental endowments, prodigal as his labors have been, they can shelter no offense against the law.

Genius as lofty, learning more rare and profound, could not save Bacon. He sinned and fell. Upon his memory history has written the epitaph, "The greatest and the meanest of mankind." Toward great men in disgrace, like those who fall, Whittier, New England's gifted poet, writes in his poem entitled "Ichabod:"

So fallen! so lost! the light withdrawn
Which once he wore!
The glory from his gray hairs gone
Forevermore!

Revile him not—the Tempter hath
A snare for all,
And pitying tears, not scorn and wrath,
Befit his fall!

O, dumb be passion's stormy rage,
When he who might
Have lifted up and led his age
Falls back in night.

Scorn! would the angels laugh to mark
A bright soul driven,
Fiend-goaded, down the endless dark,
From hope and heaven!

Let not the land once proud of him
Insult him now,
Nor brand with deeper shame his dim,
Dishonored brow.

But let its humbled sons instead,
From sea to lake,
A long lament, as for the dead,
In sadness make.

Of all we loved and honored, naught
Save power remains—
A fallen angel's pride of thought,
Still strong in chains.

All else is gone; from those great eyes
The soul has fled:
When faith is lost, when honor dies,
The man is dead!

Then, pay the reverence of old days
To his dead fame;
Walk backward, with averted gaze,
And hide the shame!

Gentlemen, I commit this case to you in the sublime language of the great orator who speaks to you from his grave at Marshfield:

"With conscience satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from but the consciousness of duty disregarded. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning and dwell in the uttermost parts of the earth, duty performed or duty violated is still with us for our happiness or misery, and if we say darkness shall cover us, in darkness as in the light our obligations are yet with us. We cannot escape their power nor fly from their presence. They are with us in this life, will be with us at its close, and in that sense inconceivable solemnity which lies yet further onward we shall still find ourselves surrounded by the consciousness of duty to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it." [Applause.]

At the close of his argument, Mr. Beach was greatly applauded, and soon after was warmly congratulated by Mr. Evarts. The speech occupied over a week in delivery, and would fill a volume by itself. Space will not permit a full account of this most marvelous trial of any in America. The jury stood, nine for defendant and three for plaintiff—about as public opinion averaged. The charge of the court could be summed up in a sentence: "You have heard all the testimony and the arguments; take the case and decide it according to the evidence." A model charge.

THE BABCOCK CONSPIRACY CASE.

Tried at St. Louis, February, 1876.

The close of 1875 and early winter of '76 was an exciting period with the famous ring of illegal distillers in the cities of Chicago, Milwaukee, Cincinnati and St. Louis. The startling discoveries through Secretary Bristow, the successful prosecutions in Wisconsin, the incisive words of General Grant, to "Let no guilty man escape!" led many to confess and plead guilty, while some were promptly convicted.

The central figure or seat of war was at St. Louis, where Joyce and McDonald were supposed to have colluded with General Babcock, a near friend of President Grant, to defraud the Government of its revenue on distilled liquors and divide the profits. Early in 1876 General Babcock was tried in the United States District Court, before Judge Dillon and a jury.

Among the distinguished counsel were General Broadhead, General Dyer, General Porter and Hon. Emory A. Storrs, each with a reputation fully established, and in this trial each displayed signal courage, courtesy and ability, as extracts of their addresses will prove.

The leading features of the trial were the liberal range of testimony admitted, showing that fraud opens a broad door in such cases. Even the fact that a telegram was received at St. Louis, and mailed, properly prepaid and directed, was decided to be *some* evidence that it reached its owner. The same rule was held as to the mailing of letters, although no evidence aside from this could be adduced to show the actual receipt of the dispatches.

The arguments of the four counsel reported each contain separate statements of the offense charged and the explanation ingeniously given. The case was very sagaciously managed and sharply contested every inch of advantage held on either side. It is difficult to compare the arguments, but the word-pictures of Mr. Storrs are vivid and life-like. His closing appeal to the jury was delivered in an eloquent and effective manner.

Mr. Storrs is below the medium size, under fifty years of age, dark brown hair, full short beard; a man of great fluency and command of language. He speaks with intense force and feeling, rather flowery in his rhetoric, and, when fully aroused, his language is free and well chosen. In speaking, he is wholly absorbed in graphic, animated action. His manner alone is often very eloquent, and always highly pleasing to an audience. It is a matter of wonder to many where he finds so many apt illustrations in the midst of a heated discussion. In a word, he is gifted, as a speaker.

ARGUMENT OF MR. STORRS.

IF YOUR HONOR PLEASE:

Gentlemen of the Jury—You are here to-day, and have been for the period of nearly two weeks, engaged as jurors in listening to the evidence in a case which, without exaggeration, possesses the most transcendent importance. In but very few instances, gentlemen of the jury, in the history of this country have issues so solemn in their character, and so serious in their nature, as those which are involved in this case, been presented for the consideration of a jury. I am sure that all these considerations have impressed themselves duly upon your minds; for I have not failed to note, and I have been profoundly gratified to observe, the patient, earnest, eager, faithful attention which you have given to this case from its commencement down to the present moment. The supreme importance of this case, and the magnitude of the interests which are involved in it, furnish a sufficient apology to me, if any apology were required, for impressing upon you the necessity of bringing to bear upon it your most calm, unbiased and unconstrained judgment. It is a part of the history of the immediate times in which we live, and to which I deem it entirely proper to refer, that, for the period of nearly a year past, there has been, with reference to the general topic in the investigation of which you have been engaged, an intense degree of public feeling and excitement. You do not, gentlemen of the jury, when you quit the homes from which you have been called, cease to be men. You are the

same men here to-day that you are by your own fireside, and in the presence of your own families. These great gusts of public feeling, these whirlwinds of public excitement that sometimes sweep across the land, and take even the wisest men from their feet, may possibly affect you upon the jury box as they would effect you at home. I am a firm, thorough, devoted believer in the ultimate right of what is called "public opinion." I believe that it is almost always correct, and almost always right upon the premises upon which it is founded. A well-regulated public opinion, understanding all the facts, moving without bias, prejudice or passion, is, I am glad to recognize, the surest earthly evidence we have of truth. But, gentlemen of the jury, it has never been considered a very safe element in the administration of justice, since nearly two thousand years ago it profaned the judgment seat and insulted heaven by the cry of "Crucify Him, crucify Him!" You are here to-day as jurors in a great and solemn cause. I am here as an advocate in that cause. You have your duties to perform—I have mine; and I ask and pray you, gentlemen, as we both enter upon the performance of these duties, that we may do them with "hearts void of offense towards all;" that you may dismiss from your minds every bias of prejudice or passion, which by any earthly possibility could have found a lodgment there; that, with clear judgment, unwarped by any breezes or heats of public controversy; that, with unprejudiced hearts, unaffected by the poison of political passion; that, with pure, upright, honest judgments, untwisted by any mere private feeling of your own, we may approach the discussion of this great case. We are here to-day, gentlemen of the jury, in this darkened room; the surroundings are not at all impressive, the actual picture which you would make of it possesses no elements of beauty or of grandeur; but, clothed in its highest reality, it is the most splendid theater upon which a jury ever stood. It is a high and elevated plateau, toward which to-day the eyes of forty millions of people are eagerly strained. Let us, then, with God's help and our own, reach in the investigations which we are pursuing, and in the conclusions to which we shall ultimately arrive, the full height and measure of this mighty argument. If you have prejudices, dismiss them; if you have preconceived opinions, put them down; if you have feelings that have already been aroused, smother them.

I approach and come to this great question with that rectitude and perfect fibre of conscience which the law and your own better judgments demand. We are all, gentlemen of the jury, far, very far, from being perfect. There is no duty which men are ever

called upon to perform so solemn in its nature as that of passing judgment upon the motives of their fellow-beings. The poet has well said, and I repeat it—

> "In men whom men condemn as ill,
> I find so much of goodness still;
> In men whom men pronounce divine,
> I find so much of sin and blot,
> I hesitate to draw the line
> Between the two, where God has not."

I shall call your attention, gentlemen of the jury, in the discussion of this case, to the facts in it. I shall not attempt—and I could not succeed should I make the attempt—to impose upon your calm judgments by any flowers of rhetoric, or by any graces of oratory; all the eloquence, gentlemen of the jury, that will be developed in what I shall say to you, will be the tremendous eloquence of these facts.

I have listened with pleased and earnest attention to the argument to which you have also listened this morning by a great Missouri lawyer; by an able lawyer; one with a reputation established, not only throughout the boundaries of the state which he honors, but throughout the whole country; and you will agree with me, gentlemen of the jury, when I tell you that but one general impression can be drawn from the speech of Col. Broadhead, and that is that it was a speech without heart and without faith in the cause that he advocated; and to the very last degree—able in the statement of facts which were not proved; able in the suppression of facts which were proved; able in the distortion and contortion of facts, the obvious existence of which no man could controvert. For nearly two weeks have we been engaged in this investigation; day after day passed before the name of this defendant had even been mentioned; we investigated down to the very last detail of the circumstances attending the conspiracy about which so much has been said, and concerning which all men's mouths and minds have been full. It is well for us to-day, it seems to me, before proceeding to the discussion of this case to determine in our minds just what the refuse matter of the case is, and what are the actual issues that this record presents to us.

In the first place, it is perhaps unnecessary for me to observe, but it is true, nevertheless, that the consideration as to whether this alleged conspiracy was great or small is one with which you have nothing to do. It may have been, as it doubtless was, absolutely gigantic in its proportions; by its very vastness its shadow may have stretched like a pall over the whole land, and yet if the

defendant was not a member of that conspiracy, this stupendous magnitude cannot affect him. In the same connection, it is a matter entirely irrelevant to this issue how much revenue the government lost by means of this conspiracy; whether it were millions, or whether it were hundreds of dollars, if this defendant was not a member of that conspiracy, that consideration is entirely foreign to this investigation. At the same time it is equally irrelevant whether Joyce and McDonald, Avery, Hogue and Fitzroy were all members of this conspiracy; if the defendant were not a member of it those considerations are entirely extraneous, and you will reject them from your consideration. This defendant is indicted as a party to a conspiracy. Will you bear with me, gentlemen of the jury, when I suggest to you that there is no offense denounced by the statute book so dangerous in its character when the charge is once made, as this very one of conspiracy. It is the only offense known to our law where one man is liable to be punished for the act of another, where the honest citizen, the upright man, one whom we had honored, may lose life and liberty, not from any word that he has uttered, not because of any act that he has ever done, but for words spoken and acts done by others.

THE CHARGE OF CONSPIRACY.

With what is this defendant charged? In the broad and general language of the indictment, that he combined and confederated with certain persons named in the indictment to defraud the government of the United States.

The statute upon which this indictment was found, and under which this defendant is to-day upon trial, requires that some act should be done in furtherance of that conspiracy before the offense itself is complete. It is not pretended here that there is anything like direct proof of any connection on the part of this defendant with this conspiracy. It is not pretended that he shared in the acts set forth in this indictment as the means by which it was consummated; it was idle to claim that. The government was defrauded by the removal of highwines without the payment of the tax, and more than a thousand miles of distance separated this defendant from the active theatre in which this conspiracy was in operation. How, then, does he become a conspirator? What has he done in furtherance of this corrupt and fraudulent scheme? He has removed no spirits, that is not claimed. It is averred by the learned counsel who have addressed you that the position which he filled was to furnish information—of what? They say of the coming of detectives. I say now to you, gentlemen, and I will

demonstrate it before I have finished, that if that was the part assigned to Gen. Babcock, he miserably and wretchedly failed in its performance, for during the whole period of time covered by the operations of this conspiracy, not one single syllable of information did he ever furnish to the active conspirators with reference to the coming of any human being here to investigate their frauds. Was it to give information generally? There is not in all this vast mass of testimony, piled up as it has been within the last two weeks, one single syllable of evidence showing or tending to show that Gen. Babcock ever communicated to a single member of this conspiracy one single item of information which they had not before that time possessed. To-day it was hinted by Col. Broadhead that the peculiar mission which he was to fill, and the special duties which he was to perform, were to prevent the sending of officials hither. There is not one syllable of evidence in this case, gentlemen of the jury—and I challenge your attention to that fact—showing, or tending to show, that he ever prevented a single man coming here. I will pause right there upon the very threshold of this case. What in the name of God was he to do? For what was he to be paid? What part was he expected to play in this great conspiracy? Two weeks have come and gone. Reams and reams of testimony have been taken. The whole power of the government has been employed for nearly a year in developing the facts; the grave has been robbed for evidence; every telegraph office in the country has been ransacked and raided; the sanctity of privileged communications between counsel and client has been invaded; and yet, down to this day there is not one single syllable of evidence from which any honest, right-minded man can say that he could tell or guess what part of this conspiracy Gen. Babcock sustained. I challenge your attention, gentlemen of the jury, to that great consideration which meets us at the very threshold of this case. It stands there like a mountain barrier in your way, and you might as well attempt with your naked hand to twist Mount Washington from its eternal anchorings in the hills of old New Hampshire and heave it into the sea, as to remove that tremendous obstacle which the Almighty has placed between that defendant and a conviction. I care not, gentlemen of the jury, how strong your impressions may have been when you came here; I care not what seductions of eloquence or what threats or cajoleries may be employed, when you come to ask yourselves the question and your heart answers it: What part was Gen. Babcock expected to perform? You cannot tell. If you say it was to give information, your conscience throbs against your side like a trip-hammer and

demands that it shall be heard to refute a conclusion of that character. Through all this lapse of time, with all these gigantic preparations, with all the sunshine, as if blazing planets were shining upon us, to aid them, these wretched, purposeless, and so far as any connection with this case is concerned, meaningless telegrams, have been discovered written by this defendant. Was there ever such a tremendous pronunciamento and such a miserable performance?

I call your attention again to another feature which characterizes this case, and that is this: Taking advantage of the supposed public excitement; taking advantage of the natural indignation which every honest mind entertains towards these frauds; taking advantage of supposed political feeling—taking advantage of all these, and forgetting the first lessons that he learned in the law, Col. Broadhead, the great leader of the Missouri bar, a noble and fair-minded man himself, swept off his feet by the breeze that has been blowing around him for weeks, asks us to explain something which he says he cannot explain, forgetting that in the better times and in the better days, to which, I thank God, we are rapidly coming back again, it was for the prosecution to prove guilt before a defendant could be called upon affirmatively to establish his innocence. We have, gentlemen of the jury, accepted the situation. We have been compelled to accept it. We have desired to accept it. We recognize the fact, charged as we have been with the commission of this foul crime, which, if proved, would consign us to utter infamy. That we are compelled to be tried, and are willing to be tried, at the cost of the abandonment of every legal principle which, for thousands of years, has been deemed essential for the protection of the rights of the citizen. You know, gentlemen of the jury, as I know, that whatever the theory of the law may have been, this defendant did not come into this court-room, so far as this transaction is concerned, clothed with that sacred presumption of innocence which the law throws around every man; you know, as I know, that there has been no single argument addressed to you, nor in your hearing, which gave him the benefit of that presumption; and to-day, forgetting those great lessons which he has learned, and which no one is more able to illustrate than Col. Broadhead, he freely says to you that he cannot understand what a dispatch means, and that, therefore, you are to presume it means guilt. He has been unthinkingly and unwittingly lifted up to that position, which, if we should reach, gentlemen of the jury, yourselves and your homes, and all that you hold dear in this world, would not be worth an hour's purchase.

I say we have accepted the situation. We ask to-day, from this

jury and from this great country, no favors; we are begging no privileges; but we do demand a right; and in this place, speaking to you, and through you to the whole nation, we demand the right of an honest, intelligent, fair-minded judgment upon these facts. We simply say to you, gentlemen, that we think it would be very unjust, that the honorable career of this defendant should rise up against him. We think it would be very unjust that, because yet a young man, standing upon the very threshold of his career, the good deeds that he has done should rise up and reproach him. We think it would be unjust to the extent that it would be cruel, that because with the noble lessons of thrift and honor, fidelity and God-fearing that he has learned in his old home, and has carried with him through life, he should be convicted of this crime. If he is guilty, blot out all that he has done; if he is guilty, forget that up to this time, his life has been pure and lofty and stainless; if he is guilty, bury all these achievements out of sight, which, young as he is, have shone along his pathway like beacon-lights. We ask of you, gentlemen, nothing for his position. Give him the same fair trial, give to the facts the same honest consideration that you would give to them if a newspaper boy from the streets were on trial before you; give him that and nothing more.

Now, gentlemen, you must, when you come to consider these facts, put yourselves back to the period of time when all these facts occurred. When you come to read these dispatches and these letters, you must read them not in the light of to-day, for that is a false light and will mislead you, but in the light of the day when they were written, and when the parties to them received and read them. Read these telegrams sent to Babcock in the light of the days when he received and read them, and when Joyce and McDonald were, so far as he knew, honored officials and trusted men. Do not read them in the light of to-day, when, broken in character and bankrupt in reputation, they fill a convict's cell. Read them, remembering this, that with all the gigantic preparations that have characterized this case, from its commencement to to-day, not one single syllable of evidence has been adduced to show that General Babcock ever suspected, or had reason to suspect any fraud.

In ordinary times and under ordinary circumstances, I might rest this case right there. I defy any man who knows the evidence in this case to point me to the spot or place which indicates that Gen. Babcock knew the corrupt schemes in which Joyce and McDonald were engaged, and if he knew them not, the case fails at its very threshold.

Gentlemen, any one of you may give an opinion of the most

important character to a man who, in his heart, is the most notorious scoundrel on the planet; the information which you thus communicate may be absolutely indispensable to enable the party to whom it is communicated to carry out and consummate a crime; but you in your own hearts following me have already made the suggestion to yourselves, that the communication of that intelligence which might have ripened into the most stupendous crime cannot implicate you, unless you knew the character of the man to whom it was given and the purpose for which it was to be employed.

I take one step further. Has it occurred to you to inquire where is the evidence in this case that Gen. Babcock knew the purposes for which the information that Joyce and McDonald sought from him was to be employed? Let your minds travel back over this case again—review every syllable of testimony—where is the proof? The case does not show it, for it is not in it. Col. Broadhead tells you that a conspiracy is a difficult crime to prove. All crimes are committed secretly, and conspiracies do not differ in that particular from any other crime, but the difficulty does not dispense with the proof. Ah, gentlemen, Col. Broadhead, in that suggestion, conveys this lurking idea, that because it is difficult to prove, and from the fact that we have not proved it, therefore, he substantially says—because that is the speech that came out from the pores, but not from the mouth—"I cordially invite you to violate your oaths by assuming that the crime has been committed, although we have been unable to show it." But, gentlemen of the jury, if Gen. Babcock had ever known the purposes for which this information was to be employed, wouldn't they have found that out?

This case is full of wonders. Stop again! A thousand miles separate Babcock from the theater of this conspiracy. He never saw a distiller here; he never knew one here; he never heard of one by name; he was as ignorant of the existence of the distilleries here as Fitzroy evidently is of the teachings to be drawn from the story of "Annanias and Sapphira." He is a conspirator in whom no knowledge is shown. With all these gigantic efforts in the way of the development of facts, not a single syllable of proof showing, or tending to show: first, either that he suspected the character of the men with whom it is said he was conspiring; second, that he ever dreamed of any guilty purpose, which they themselves entertained, in replying to questions which they put to him; third, that he ever knew even that there was a distillery here, or that there were facilities in that way of perpetrating frauds against the revenues and government of the United States. If these facts had

existed, and this facility of telegraphing and writing had been opened, don't you know that somewhere or other there would have lurked and leaked out the evidence of it? It is idle to tell us that Babcock knew that McDonald and Joyce were bad men. They have not proved it. If he knew it, they would have proved it. It is utterly idle to tell us that he knew they entertained any guilty purpose when they made inquiries of him; if the fact had existed, they could have shown it. Removed, as I have said, leagues and leagues from St. Louis, no one of these self-convicted distillers that they have trooped up here as witnesses, day after day polluting and besmearing a court of justice by their unclean presence, has hinted that he ever saw or heard of Gen. Babcock, except as a public man.

Now, then, Joyce, the principal operator in this great piece of scoundrelism, was a revenue agent in St. Louis—appointed by whom? By Babcock? No. By the President? No, again. A clerk in the department in Washington, transferred from there and appointed a revenue agent in Missouri by the commissioner of internal revenue. There, so far as the history of this case is concerned, occupying that position, we first find John A. Joyce, in December, 1870, when the acquaintance between Joyce and Babcock opens in this fashion. Politics and political feeling, I am told, have always run high in the state of Missouri. We meet this acquaintanceship at its very outset, and I find a letter from Joyce to Babcock, inclosing an editorial written by Joyce in favor of the administration, of which Gen. Babcock forms a very humble part; and in that way the acquaintance thus opened proceeds. Editorial after editorial, speech after speech, does the active, zealous Joyce inclose, month after month, to Babcock. The receipt of these inclosures is recognized, and all the correspondence, leading us step by step right down to the very moment when we encounter the first dispatch, which shows to an absolute demonstration that that acquaintance was merely political, and nothing more. The learned counsel for the Government would have you think that this conspiracy jumped full-born into life and existence, and without any preparation, without any previous talk or arrangement, it came out complete and perfectly rounded in all its parts, on the occasion when Ford died and on the twenty-fifth of October, 1873, when Joyce telegraphed the fact to Babcock. Now, gentlemen of the jury, there would have been no difficulty, if there had been other dispatches, in finding them. The offices have been ransacked; the first dispatch which they offer in evidence is the one from Joyce to

Babcock; and from that they would have you infer a guilty complicity between the parties to that telegram.

Now, let us read it:

"Poor Ford is dead; McDonald is with his body. Let the President act cautiously on the successorship."

This dispatch was not answered. No attention whatever was paid to it. Can you guess a guilty significance from that dispatch? Col. Broadhead says to you, "What does it mean?" I answer him, it means precisely what it says. It means that Ford was dead. It means McDonald was with his body. It means that, in that florid and declamatory way in which Joyce was accustomed to express himself, and in the consequential manner which he was accustomed to assume, "Let the President act cautiously on the successorship." Why cautiously? That a good man should be appointed. As this correspondence shows down to this very time, Babcock had every reason to believe that Joyce was not only a zealous friend of the administration, but a thoroughly honest man. Joyce was here in St. Louis. Now, what was done? Ford was the old-time friend of the president. They had been, as I shall have occasion to show you, friends for a quarter of a century. Ford had died; and if there is a man in this country whose heart warms up to his old friends and those he has known in his earlier days, it is the President of the United States. He is very slow to forget them. He is very slow to bury out of sight any act of kindness, that in the olden times they may have done for him. He is very quick and ready to forgive. The old friend, who, for a quarter of a century he had known, was dead. He had died away from home, suddenly and alone; and with that thought about him, Joyce knew the cord he would strike, and telegraphed to the private secretary of the president, "Poor Ford is dead; McDonald is with his body."

Gentlemen of the jury, is that evidence of guilt? In the name of God, to what conditions have we reached that that is evidence of guilt? What will you have a man do in order to avoid the conclusions of guilt; or, what shall he not do in order that he shall not be considered guilty? On the very day that Ford died, or on the very day, at least, that this dispatch was forwarded from Joyce to Babcock, the sureties on the bond of Ford, interested in the matter, telegraphed to the president. Let me read the telegram to you, and let me also explain the situation; because, when this situation is fully explained, the miserable pretense that there is guilt in these dispatches, fades entirely away and leaves no smear or stain except

upon the hands and tongues of those who have made the charge. Ford was away from home when he died. His sureties, leading prominent men in the city of St. Louis, were liable for all the acts of his deputies, of whom they knew nothing.

* * * * * * * *

Now, there is nothing more eloquent than testimony, when it is intelligent. Month after month has the public mind been filled with this idle, this wicked clamor, and see how it fades away! This is from the deposition of the president:

* * * * * * *

Another curious circumstance: Why was it that when my good friend Col. Broadhead was reading Joyce's letter he did not read the vital part? Why was it that he omitted to read the very paragraph for which we introduce it? Joyce says:

* * * * * * * *

"Now, I am in earnest in recommending Maguire, having failed myself. Look at my dispatch to the president. Do not noise this fact around unnecessarily that I myself was a defeated applicant."

Now, I read the balance of this letter, gentlemen of the jury, because, although it is dead and lifeless, yet it is eloquent with the truth of the situation which these parties held towards each other at that time. "I am sure," he says, "that if the president acts upon the recommendation of the bondsmen and what has been sent from the officers, the interests of the government will be secure and the public generally will be satisfied. Words are not sufficient to convey to yourself and the president the pride I feel for the confidence thus far displayed in me in connection with the vacancy. I shall endeavor in my future action to continue to merit the good wishes of the president, and you will please convey to him my most hearty thanks for his kindness and confidence. Now that poor Ford is dead and gone, I can tell you truly that there are but few men on earth who can fill his place. I would like to telegraph and write you more confidentially, but as the interests of the government will be fully protected in your hands, I will say nothing further on the collectorship at present." Closing with a reference again to Ford, he subscribes himself, "I am, under all circumstances, your friend, etc., John A. Joyce."

Now, gentlemen of the jury, unless since these investigations began human nature has changed itself; unless the whole current of human affairs has been reversed; unless human motives and the methods in which they express themselves have been abso-

lutely revolutionized, it is utterly impossible that on the day that letter was dated and written and received, Gen. Babcock held to John A. Joyce the relation of one conspirator to another. Why, the entire purpose, object, scope and intent of the letter is to impress upon its recipients the idea that he (Joyce) is not engaged in any scheme to defraud the revenues, but that he is an honest, faithful, vigilant officer, in whom, by the president and his private secretary, the largest measure of confidence can with entire safety be reposed. In the presence of these facts—which are in this record, gentlemen of the jury, and which cannot be removed from it—I denounce the charge there made against this defendant as participating in the appointment of Maguire for any guilty purpose as wicked and cruel to the last degree. In the presence of these facts, of these dumb and boisterous letters and telegrams, which yet speak trumpet tones, I would, before I would utter, as a juror or a citizen, a verdict of guilty to be adduced from them, tear my heart from my bosom and see it lie quivering before me. I know, gentlemen of the jury, that you possess the physical power to do certain things, but you have not got the power—and if you had you would not undertake to exercise it—to adduce guilt from that series of dispatches. Why, gentlemen of the jury, what a tremendous price you would have to pay to reach such a conclusion as that. A broken pledge, a violated oath, an outraged conscience would be the price which you must pay for such a verdict on these facts; and, leaving this jury-box, as you will at the conclusion of this investigation, if you say that they mean guilt, that conscience, which you always carry with you, would pursue you like an unrelenting Nemesis, to the last days that you live. It would dog your footsteps like a shadow, and you could never shake it off, and into your very souls would such a crime burn, and burn, and burn, as if a blazing iron had been plunged into it. You can reach no conclusion of guilt from that series of dispatches, and go home to your homes and look your wives and your children in the face. You cannot go out among men and carry a sense of humanity with you if you reach a conclusion of guilt from these papers that I have read to you. Why, rather than do that, you had better take your farms and your houses and sink them deeper than ever plummet sounded. If you do it, go back to the fields that you have left, to the children that look to you for an example in the future, and say to them: "Here I come; here I am; soul, conscience, honor, all gone, because Dyer and Broadhead asked me to let them have them for a while." Gentlemen of the jury, you can make of these facts no such mistake as that. There they are. They were

planted in the earth when the cirumstances occurred, and they will remain there forever.

The waves of party passion may beat and surge against them, but they will resist them like the eternal rocks that bound and hedge in the sea. Is it not better, infinitely better, and are not our hearts all lifted up and exalted, when, getting into the smoke and fog and vapors of this charge, we pour the glorious sunshine, coming straight from the throne of the Almighty, into it, and they are dispelled, and we breathe the pure, clear atmosphere of heaven again? Coming from these calumnies and slanders with which the public ear has been deafened for these long and dreadful months that have passed, it seems like coming out of the close and prisoned walls of a dungeon, where pestilence reigns, holding our faces and our breasts out, and letting the clear breezes from the hill-tops blow the blessings of the Almighty into the face and soul. Isn't it splendid, after all, lifting ourselves away above these little prejudices which have environed us? Isn't it grand to say, "Thank God! Republican, Liberal and Democrat alike, the great names of our history are dear to us alike; it is a delight, the like of which we have never before experienced; it is a glowing delight, heavenly almost in the joy which it gives in that what was dark as guilt, we find innocence so perfect and complete that it is almost radiant in its character. I cannot, gentlemen of the jury, discuss these questions without feeling as if I were lifted away above myself, as if there were an inspiration raining down upon me and upon you. If there is anything that makes a man noble among men, that demonstrates the fact that there are things about us and in our nature, which are divine, it is that blessed sense of eternal justice which prefers to believe in innocence rather than, with a satanic malignity, to believe in guilt.

If your honors please, it distresses me very much to be compelled to ask further favors from this court, but I feel as if I could hardly proceed another ten minutes.

The closing words were extremely touching and pathetic, as the speaker, with husky voice and magnetic power, pictured the family scene at Washington; his eyes beaming with the fire of earnest conviction; his frail form trembling with emotion; the court-room hushed to a painful silence: "He is not guilty, gentlemen; he is not guilty. I feel an inspiration settling in this court-room, stretching away as if to bear the glad news to his devoted family, who, in his humble home where an anxious wife, now surrounded by her little children, are kneeling, watching, praying, looking for

his deliverance and joyous return to the capital of his country he has served so long, so faithfully, and so well."

ARGUMENT OF JUDGE PORTER.

IF IT PLEASE THE COURT:

Gentlemen of the Jury: We meet as strangers; but in the course of two weeks in the discharge of our respective duties, and the kindness and patience, the marked intelligence with which you have listened to the evidence and arguments in this case, make us all feel now that we are not before strangers, but friends. We feel that we are not before a jury who regard us with prejudice or unkindness. We believe that if the evidence had been such as to lead you to a conclusion of guilt, it would have been with sadness and pain that you would have pronounced a verdict that blasts this young man's name and character. And when we find that the evidence, in the case when fully disclosed on both sides, leads only to a conclusion of innocence, we feel that you will rejoice in the opportunity of pronouncing by your verdict the vindication which is due to his innocence and integrity.

The friendship and confidence with which, in the past, Gen. Babcock has honored me led him to select me as one of his defenders. I recommended him in my place to substitute one of the members of your own bar—a gentleman of national reputation and far my superior in ability, but the defendant very naturally felt that on this trial, upon which his all depended, he wished to be represented by the friends who knew him and trusted him, rather than by strangers who judged him only by the multitudinous calumnies of the hour. Having, as I have and have had from my first knowledge of the facts in this case, the most absolute conviction of his innocence, I feel grateful to him that I am privileged to stand before you as his advocate. I am grateful for the fact, of which, whatever I might have thought before I reached here, I am now convinced that he stands before a jury—some his political associates, some the representatives of other political parties and antecedents, but one and all just men, who love truth and will vindicate his innocence.

The connection of Gen. Babcock with the public service, and the friendship of Gen. Grant have given him a prominence which he earned by merit and never sought. It has been always his pride, as it is to-day, that he is the son of an American yeoman, and no such man stands in fear of injustice before a jury of the farmers of

Missouri. If the fact of his connection with President Grant and the calumnies of the newspaper press causes his case to be prejudged by those who did not know him, the developments of this trial have reversed public opinion here, and he receives from the leading citizens of St. Louis, without distinction of party, the assurance of their earnest sympathy, and they strengthen our hands by their hearty God-speed upon every hand. Let me, for myself and my associates, express our grateful thanks, and our cordial and sincere acknowledgments to the leading counsel for the prosecution for their manly and liberal courtesy to the advocates charged with the defense of the stranger, and our appreciation of the eminent and masterly ability with which they have conducted this prosecution, although in a spirit which, in their mistaken zeal, would lead them to trample an innocent man into the grave. They have tried the case, however, according to their own intent, fairly, but in our judgment, with a bitterness toward the defendant personally such as I never saw before in the conduct of a state prosecution. It is attributable to their earnest zeal, and to their avowed hostility to President Grant. They do not affect to conceal it. They evidently feel that every stab they give to this defendant is a thrust through him at the president, with whom, for some cause, they seem to be offended. Why they should strike at Gen. Grant we do not know, unless they think his sworn testimony lies in the path between these two eminent gentlemen and a new professional victory. So it was with Andrew Johnson, who preceded Grant.

He was a president without a party. He had been elevated to that office against the voice and the vote of the Democratic party, but when a time came that, in the interests of peace, conciliation and harmony, exercising his best judgment, right or wrong, he separated himself from his political friends, they turned upon him with the charge of falsehood and of treachery, and he stood alone, a great commander without an army, a president without a party. Foes to his right, to his left, in his front, in his rear, and each armed with javelins, thrusting at his honor and his life. The newspapers condemned him. Not content with that condemnation, leading members of the house of representatives caused articles of impeachment to be preferred, and these were tried before the highest judicial tribunal that ever was convened on the American continent. The ablest men in the house conducted the impeachment as managers of the prosecution, but not with the bitterness with which this prosecution has been conducted as against this defendant. They were earnest, they were zealous, they were able. They did their utmost to secure his conviction. They were men

the like of whom for power and ability has rarely appeared in any tribunal on earth. But he was tried by a tribunal over which Chief Justice Chase presided, and where the jury who were to pronounce the verdict were the senators of the American states. Those senators were not his political or his personal friends. A large majority of them were his political adversaries, driven to indignation by a supposed betrayal of trust reposed in him by the party who elevated him to power. It embraced many bitter personal enemies. But, gentlemen, the case went to them upon the evidence. The politicians ceased to be such. The senators became sworn jurors. They determined the case not upon antecedent prejudice, but upon the evidence of their honest convictions, and Andrew Johnson was acquitted. The newspaper judgment was reversed, and what has been the sequel? After the expiration of President Johnson's term, Tennessee returned him as a senator, to the very capitol in which he had been arraigned as a criminal. When he died—and the memory of that event is still fresh in our recollections—in that very capitol his accusers became his eulogists, and one of the greatest statesmen of the country, who in high party times had voted as a senator for President Johnson's conviction, stood, but a few months since, in his place, in the same senate chamber where he cast his vote, and nobly and honorably proclaimed, not only to his peers in that body, but to the country and to the world, that in his present judgment Andrew Johnson, against whom he then cast his vote, lived and died an honest man.

Allow me, gentlemen, to recall your attention to some of the leading and undisputed facts to which I had occasion to invite the attention of the court on the preliminary argument, and which in every stage of the case must be constantly borne in mind, in order to reach a safe and just conclusion. I shall recur to them only briefly (for it may well be that, although the argument was addressed to the court, you may recall its general bearings) to bring back, by a few catch words, the leading ideas then suggested with a view to the further progress of the argument.

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We have, then, the anomalous case of a conspiracy sustained by no evidence that the defendant ever met the conspirators—that he ever knew of their meeting—that he ever entered into an agreement with them, or that he ever knew of any agreement they had made with each other. Sustained by no proof that he ever bargained for or ever received a share of the plunder, and by no proof that he ever, orally or in writing, admitted any connection with

the conspiracy, or that any one, either orally or in writing, communicated to him the fact of its existence.

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Neither of the counsel makes the direct assertion; neither of them believes it to be true; neither of them will say that they believe it, but they pay to you, gentlemen, the poor compliment of supposing that such inuendoes may appeal to the political prejudice of some juror in your midst. It is unworthy of them. I do not reproach them of intentional wrong, but I submit to them whether it is a professional device which even in their zeal to blast the good name of this defendant is worthy of their position and reputation? They were driven to this expedient by the necessities of the scuttled and sinking prosecution. Gentlemen, if Gen. Grant was not a party to this conspiracy, if he was not privy to its existence, you see—as the prosecution see—how utterly improbable it is that Gen. Babcock was one of the confederates. No one will charge him with infidelity to his chief. He has held a position in the confidence of the President which, with his conceded and eminent ability, if he had aspired to distinction in civil life, would have commanded for him almost any other office, at home or abroad, in the gift of the President. If he had been under the curse of cupidity and avarice, he could have turned his $6,000 a year as an officer in the army into a salary in civil life which would have enriched him in a single year. What would be the measure of Gen. Babcock's infamy, if in his relations to the President, he had been capable of betraying him? What would be the depth of his degradation if, after being educated at the expense of his country at West Point, after being honored in peace and in war in the public service, still holding his commission in the army, he had been capable of selling the government to thieves, and dividing with them the price of his own degradation and crime? Gentlemen, in the light of the evidence the prosecuting attorney cannot believe it. No honest man, after reading this testimony, can believe it. It is conceded that there is no direct evidence of guilt. They tell us, however, that conspiracy is a secret crime, and therefore you cannot expect clear proof of guilt. Gentlemen, is that a reason for convicting whoever happens to be accused, without proof of his guilt? Murder is usually, in its worst form, a secret crime; but do you, therefore, hang whoever happens to be accused, without clear evidence of the crime? In this case, if guilt existed, direct proof is accessible, though it is not produced. The prosecution have each of the actual conspirators in an unyielding vise, and a single turn of the screw can compel each man to speak whatever he knows. If the charge were true, they

had direct proof at hand. But it is not true, and therefore the direct proof fails. In each of the other cases, bear in mind, gentlemen, they had direct proof. In the case of Joyce it was oral and in writing, positive and overwhelming.

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In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

Every other possible supposition by which the facts may be explained consistent with the hypothesis of innocence must be rigorously examined and successfully eliminated, and only when no other supposition will reasonably account for all the conditions of the case, can the conclusion of guilt be legitimately adopted.

In strict conformity with these sound principles of reasoning and inference, Lord Chief Baron McDonald said that the nature of circumstantial evidence was this: That the jury must be satisfied that there is no rational mode of accounting for the circumstances except upon the supposition that the prisoner be guilty. And Mr. Baron Alderson, in another case, with more complete exactness, said, that in order to enable the jury to bring in a verdict of guilty it was necessary not only that it should be a rational conviction, but that it should be the only rational conviction which those circumstances would enable them to draw.

The other is merely referring to the language of Chief Justice Denio, which was in my last citation at page 145, in 32 New York, illustrating this doctrine of presumption from circumstances. It was a question of arson: "Suppose the presumption that the prisoner did each of these acts was equally strong, the proof as to one would not tend to prove his criminality in regard to the other. We cannot presume that he burned the barn because we presume that he intended to burn the house. One presumption will not aid the other. The infirmity which attaches to the one equally attaches to the other. The logic upon which circumstantial evidence is based is this: We know from our experience that certain things are usually concomitants of each other. In seeking to establish the existence of one, where the direct proof is insufficient or uncertain, we prove the certain existence of a correlative fact, and then establish, with more or less certainty, according to the nature of the case, the reality of the principal fact. But the reasoning is a perfect fallacy, if the defect of proof which renders it necessary to call for the aid of the collateral circumstances equally attaches to

the collateral circumstances. It is like the blind leading the blind."

Gentlemen, it happens to-day that the man who is on trial is a stranger to you. But are we not aware of the vicissitudes of life? How little he dreamed one short year ago that he was to be arraigned as a criminal, a conspirator and a thief, before a jury of those upon whose faces he had never looked! How little Andrew Johnson dreamed when he received the proud token of the confidence of the American people which made him, in the course of events, the successor of President Lincoln, that within the short time of his administration he was to be arraigned at a criminal bar, before a tribunal more august than had ever before assembled in this country! And how little do we know what the future has in store for us and for our children!

The merit of the constitution and the laws is this—that no man's liberty can be taken away; no man's character can be blasted for crime, except upon the verdict of twelve men, and upon evidence so clear and conclusive that it shall override all presumptions of innocence and to compel a jury to unite with one accord in proclaiming that the evidence establishes guilt and crime.

ARGUMENT OF COL. D. P. DYER.

If the Court Please:

Gentlemen of the Jury—I congratulate you upon the near approach of the end of this most important trial. You have given to it, gentlemen, for more than two weeks, your deliberate, undivided, faithful attention. Having been assigned to close the argument for the government in this case, I feel a weight of responsibility resting upon my shoulders that I never felt before. I stand here as the representative of the government, trying to enforce against all, whether high or low, rich or poor, the laws of the country. I feel that through me, humble as I confess I am, as unimportant as I always have been, I feel that through me to-day must speak the people of this country, who are the nation, and yourselves.

And in approaching the discharge of duties so responsible as these, I ask your kind indulgence, as I have asked the Father of us all to sustain and support me while I undertake to represent, in my feeble way, the interests so important that have been committed to my charge. It is a sacred duty that I have to perform. I would be unfaithful to myself; I would be unfaithful to the gov-

ernment whose officer I am; I would be unfaithful to the dearest ties of my life if in this presence I failed to do my whole duty.

Nine months ago I entered upon the discharge of the duties that I am now discharging. I came here, finding seizures of property worth thousands of dollars, which had been made by the public officers. In all of that investigation, from that time to this, I can lay my hand upon my heart, and, in the presence of my Maker, say that I have never had any other motive in view than the faithful and upright discharge of my duties as a public officer. I have never during that time sought to implicate any innocent man. Nor have I during that time sought to shield any man who was guilty. But, as long as I occupy this position, as my Maker is my helper, so long will I undertake to present fairly and honestly to the jury that try these cases the evidence that has been obtained and presented against them.

You have heard a most remarkable case. You have heard as well a most remarkable defense. For three days have you listened and listened to the arguments of distinguished gentlemen who have presented this case in a most able manner to your consideration. I feel in their presence, and in the presence of this court, my own insignificance as compared with theirs. When I find the defendant arraigned for trial in this court-room defended by counsel of world-wide reputation, I feel doubtful of the ability of the government to make plain to you a case that is so plain to us. And that defense—able, ingenious and strong as it has been—has struck you, as common, plain, sensible men, who desire only to find the truth in this case, as a most remarkable one.

The distinguished gentleman who argued the case on yesterday started out in his argument by saying that this was a prosecution against the president of the United States, and that there was some personal hostility upon the part of the prosecution toward the president of the United States, and that he knew of no reason for it except that the president's deposition stood in the way of another trial at this bar. The president's deposition is before this jury. He has been examined as any other witness has been examined, and, in commenting upon his testimony, I will comment upon it with the same independence as I would comment upon the testimony of any other witness that is introduced into this court. But when the gentleman, for a purpose, seeks to put the prosecution in the attitude, as his language would seem to imply—that the president of the United States was on trial, and not the defendant, I do not intend that the red flag that the gentleman thus flaunts in my face shall be taken up and followed to battle.

As well might he say that the president of the United States was on his trial when Gen. McDonald was on trial. As well might he say that the president of the United States was on trial when every officer in this city was on trial, as to say that the president of the United States is on trial because Gen. Babcock is on trial. Each of them held official position under the government. Each of them held official position under the one or the other branches of the government, and yet he comes and says to this jury that for some reason, and he supposes the reason to be that the president's deposition stands in the way of this prosecution ; that that is why during all this time there have been some unfriendly feelings towards the president of the United States. And for the purpose, possibly, of arousing in the mind of any man on that jury who happens to be a republican, and for the purpose of arousing in all your minds just indignation against an assault upon the president of the United States, he says that for some reason or other this prosecution has shown, during this trial, an animosity against the president of the United States.

I do not intend that the adroitness of the gentleman shall put me in the attitude of an assault upon the administration, and by twisting the president of the United States to the front before this jury to hide and shield their client behind the back of the president of the United States. I intend to bring him from behind the back of the president of the United States, and by the president's deposition and by the testimony in this case, I intend that he shall stand upon his own merits, and not undertake to wring from the hands of this jury a verdict by saying that it must necessarily involve the president of the United States.

What prosecuting officer has charged it here? Who, during this entire trial, has said anything of that kind? I am sure Mr. Broadhead did not do it. I am quite sure in my opening speech to the jury I have not done it; and during this entire trial not one word in examination in chief or cross-examination has been spoken which would show it to the mind of a single man. And yet for one hour he undertakes to defend the president of the United States whose good name he says is involved in this controversy. The president of the United States, sensible as these gentlemen deem him to be, and sensible as they say he is, will not thank counsel for raising an issue in the trial of an offender against the laws of the country by bringing him forward and saying that your verdict must necessarily involve him.

That is the attitude that I am said as an officer of this government to occupy before you. He refers to these things, and I have

heard it, too, by rumor, by small men who never yet arose to the magnitude of an honest, upright discharge of a public duty. I have heard that; but when it comes in the shape as it has come to this jury by the representative of the defendant, it then becomes my duty to speak plainly of the matter, as I shall speak of it. What motive should actuate me in a charge of that sort? Is there any political reason why I should do it? There is not a man upon that jury, nor one within the sound of my voice, that does not know, as far as political opinions are concerned, that my own opinion has been with the Republican party in this country. Why should I assault General Grant? I voted for him as the nominee of the Republican party in both national conventions that nominated him; I voted for him at the polls at both elections at which he was a candidate; and what motive or political end is there in saying I have any enmity against President Grant, and that I want to gratify it by the conviction of General Babcock? Is there anything personal in the matter? There cannot be anything personal in it, because nine months ago with his own hand he signed a commission that authorizes me to speak here to-day. Then, I say, as far as concerns the motive that the gentleman impugns to the prosecution in this case, it utterly fails; there is nothing of that. But, sir, I do not intend in the examination of this case that because General Babcock is the private secretary of the president of the United States that he shall escape because he is the private secretary of the president. I would try him as I would try Basset. I would try him as I would try Everest, or McFall, or McDonald, or Joyce. He knows, this defendant knows, and the gentleman knows, that as far as any personal hostility to the defendant is concerned, that that does not lurk within my bosom. He knows that, because until October last I never spoke to the defendant. But in the discharge of my duties, gentlemen, in the honest, upright, faithful discharge of my duties before the grand jury when the testimony was disclosed and men summoned from the body of this district to sit in the grand jury room and pass upon these questions, saw that testimony, what must I do? Must I, by virtue of my position, smother the testimony, and fail to bring this man to punishment at the bar of this court? Must I, because I was a Republican, and he was a Republican, and the secretary of a Republican president who was elected under my vote—must I stand and shield that man by virtue of my position? If I had done it, gentlemen, I never could have looked my children in the face, nor would I have been able to look the honest people of this country in the face any more. * * * *

These gentlemen are terribly afraid of a public clamor. They talk about public sentiment, and talk about it all blowing over in a minute—it's all right. You have got nothing to do with public sentiment. You have got nothing to do with the opinions of the outside world. You have got nothing to do with the newspapers. And yet the gentleman makes an assault upon newspapers from one end of the land to the other, because the newspapers, he says, have prejudged this case, and done this defendant great wrong. Why all of that, gentlemen? Why all of that kind of talk to this jury? It is a most extraordinary defense that Judge Porter presents to this jury. He starts out here for an hour with his applause of Gen. Grant, and says he is a most remarkable man. Suppose we all admit it. Suppose we do admit it. He defends Gen. Grant here for an hour as if Gen. Grant was on trial. He then drops Gen. Grant and brings up before this jury and tries over again Andy Johnson, who is dead and gone long ago. [Laughter.] He undertakes to strike the Republicans upon this jury.

* * * * * * * *

Now for the story; and I tell it with this preface, in order that my motives in telling it may not be misconstrued. It reminds me of an anecdote I heard a long time ago of a most celebrated physician living in a neighborhood where he was called to see a lady in her confinement, and on the day after he met a neighbor, who says to him:

"Doctor, how is your patient?"

"Well," the doctor says, "the child is dead, and the mother will die, but by the aid of the Lord I think I can save the old man."

Now, here in this particular instance, I can only say that the gentleman undertaking to defend the president when there was no accusation against him, believes that the child is dead, that the old woman will die, but by a little help he can save the old man. Against what? That has been the whole defense here, to make you believe, and to impress upon your minds, that the president of the United States was upon trial, and if his speech had any purpose in the world it was to save the president from a charge that the prosecution has not made against him, And yet that is the way in which this case is presented to the jury.

Then here is my friend from Chicago. I was particularly amused at his speech. He is a most eloquent gentleman. He is a man of great adroitness and ability. He examines a witness very carefully and ably. He makes a speech that is just as characteristic of him as his examination of a witness is characteristic of him. He comes here from Chicago, and the first thing

that he does after he gets here is to convert this jury into steam engines—each of them. He says to the jury, "If you dare to convict Gen. Babcock, your consciences, like a trip-hammer, will beat against your breasts for all time to come, and will be as a red-hot iron run through your consciences, that will burn! burn!! burn!!!—and that you will never get rid of." And thus you are all converted into regular engines, for you have got in your consciences something that will follow you to your grave, and this fearful iron that he brings here—this terrible trip-hammer that must beat against your breasts and that must follow you always!

* * * * * * * *

Appeals have been made in various ways, after talking about public sentiment and newspapers; appeals have been made to the sympathy of the jury; and here my friend Mr. Storrs, eloquent as he is, undertakes to get to the gate Fitzroy and his man McGill, and he says that when he gets there, St. Peter, the good watchman, will say to Fitzroy, "Stand back," to McGill, "Step in." Now I could appreciate that from a gentleman coming from any other place than Chicago, but the idea that a man living in Chicago should know anything about the gate or have any idea about it! It reminds me of some fellow that died in Chicago years ago, and he went and applied for admission, and the gatekeeper says:

"Where are you from?"

"Chicago."

"Ah!" he says, "I guess you are mistaken; there is no such place as Chicago."

"Why, yes," says the man; "give me a map of the United States and I can show you that there is such a place as Chicago."

And sure enough he pointed out Chicago on the lake and showed it to him.

"Well," he says, "I think that that is at least evidence tending to show that there is such a place as Chicago, and there being evidence tending to show that there is such a place as Chicago, I guess we will admit you; but, my friend, you are the first man that ever applied for admission from the city of Chicago."

But here he is. He gets up and delivers an address, and gives you most beautiful pictures about what is to happen there in that great day when Fitzroy and McGill and all of them stand there, and he says this poor, lame, halting postman will bring up the rear. Well, he ought to start now, if he is a little lame, and try and get there.

The gentleman has spoken beautifully and feelingly of Gen. Babcock and his family. These are precincts that are too sacred

for me to enter. The precincts of the home of any man in this land—whether he be a defendant or not—are too sacred for me to enter, and I will not attempt it; but I can only remind these gentlemen, when they are making these feeling remarks in reference to the home and family of the defendant, that around the hearth-stone of poor Fitzroy—a man who is denounced as a thief and perjurer, a man who is denounced here before this court as unworthy of belief—that there may be around his hearth-stone little ones that are as dear to him as yours are to you, and that they may be kneeling at their mother's knee, as the defendant's children have knelt. Oh, how unkind it is for you to stand here before this jury and assault a man like him, when his testimony does not implicate in the slightest degree this defendant! How hard and unkind it is for you to refer to this man, whose testimony is not relied upon in this case to convict Gen. Babcock, but whose testimony alone goes to show the extent and scope of this conspiracy. Gentlemen, it is hard.

There are those associations that are around a man's own hearth-stone, that even a man in his distress does not want to say anything about. But when these gentlemen appeal in this way to your sympathies, may I not ask you to look over all of these men that have come here—all of them young men—nearly every man who has been upon this witness-stand, a man hardly yet thirty-five; men, who, with bright hopes and prospects before them, and with bright promises held out before them, have been, by testimony that could not be disputed, forced to come into this court-house and hold up their hands and say, "We plead guilty to these charges!"

But in the presence of all this, must we hesitate to do our duty? In the presence of this, must we stop and debate in our own minds as to whether we must execute the laws? Here we find millions and millions of the public treasure that has been stolen and taken away; and while the gentleman speaks for his client I speak for mine, and that client is the people, from one end of the land to the other. I speak for the rich man, with his thousands; I speak for the miner, in his dark home in the bowels of the earth; I speak for the thousands and thousands of poor in this land, who, as they kneel down to say their prayers, look only to Him when they say, "Give us this day our daily bread." It is the people of this land that are clamoring for the execution of the law. It is the people who after all these developments have been made, see the extent of this conspiracy, and through you ask that the laws of this land be enforced, and that public honor be vindicated, and when the gentleman says that forty millions of people are looking to you to-day,

and that all of the cities of Europe are looking here, it is true. Because, gentlemen, if the American people, American juries and American courts are not able to protect themselves against these wrongs that have been done to the public treasury, then I say your nation is a myth—gone.

Acquitted.

RAYMOND-HILL CASE.

Washington, D. C., April, 1880.

Belva A. Lockwood, the "Portia of American bar," the first female lawyer ever admitted to practice in the United States Supreme Court, has since acquired considerable notoriety and a lucrative practice. She is in the prime of middle life, finely formed, of easy manners, eloquent delivery and full of a woman's sense of justice and hot-tempered eloquence. In her absence, the famous Hill Case came up on motion. Without giving any notice of his intended action, defendant's counsel moved to strike the case from the docket, and at the time took occasion to press severe strictures upon the action of the plaintiff and her purported attorney, pronouncing the whole thing a conspiracy and blackmailing business.

His honor overruled the motion and promised to accord Mrs. Lockwood a hearing on Saturday. She came into the court on that morning, and expecting a lively time, the chamber was crowded with attorneys and spectators. Her first step was to ask for judgment on the ground that the defendant had failed to enter any plea in the case.

Mr. Ben Davenport, who appears with Mr. Merrick, had on that morning filed a demurrer to the bill as bad in substance and improvidently brought, and rising, said: "May it please the court—"

Mrs. Lockwood—"You are not in this case."

Mr. Davenport—"That makes no difference to you; but I am."

Mrs. Lockwood—"You are not of record."

Mr. Davenport—"I only wish to say that I protest against her speaking, unless it is to the motion."

Mrs. Lockwood—"I have a right to be heard in my own vindication."

His Honor—"Well, Mrs. Lockwood, if you can conclude in five minutes, you can proceed."

Mrs. Lockwood then proceeded, and spoke as follows:

"If your honor please, for the first time in the seven years of my practice before this court, I rise to a question of privilege. I come to ask leave to defend myself against the foul aspersions cast upon me on Wednesday, in your presence and in my absence, and in the presence of these gentlemen, by a hitherto honored member of this bar. I refer to the motion made to strike from the docket of this court the suit of *Raymond v. Hill*, No. 21,680—a suit in which no pleadings have ever been filed, no replication or issue joined, and which has never been calendered—a suit, your honor, in which there has never been an attorney of record for the defense, until the very moment when this learned and honorable attorney comes into court and, with the sublime simplicity of a child, asks your honor to dismiss a suit in which, even yet, he has no part or lot. He comes in here without notice to the attorney of record, tells your honor he does not deem her worthy of notice (he may hereafter), declines to give her notice, and then, like a brave and valiant knight, proceeds not only to traduce her behind her back, but to state things, without substantiation, that are unmitigatedly and unqualifiedly false.

"This learned attorney states that he makes this motion because I have filed this cause without the authority of my client, while he holds in his hands the papers indorsed by her signature, which he claims to know, and attested by her solemn oath, but he neglects to tell, or to show, to the court by what authority he comes, for neither plea, nor answer, nor demurrer, nor power of attorney, signed by *his* client, attest *his* authority in this case. He claims to be the expounder of law, but ignores its plainest precepts; an honored member of the bar, but forgets his honor when he deals with a woman. And this is not the first instance on the records of this court in which this attorney has been guilty of unprofessional conduct. He tells this court, in my absence (he *dared* not repeat it in my presence) that he has several *affidavits* in 'his possession bearing upon the general matter out of which this case grows, but that as they do not directly affect the merits of the question as to the attorney's authority from the plaintiff to institute it, he does not deem it necessary to file them in support of this his unprecedented motion.' Your honor, ten thousand affidavits like the one the man Small filed herein, guilty of subornation of perjury, as shown, would have as little effect upon the status of this case as the opinion of a condemned man on the statute under which he is

sentenced. He says that there may be occasion hereafter to bring them forward, intimating that he now holds them *in terrorem* over our defenseless heads to hold us in subjection and to chastise us with hereafter. Is this professional? Is this honorable? Is this the practice of the attorneys of this bar? But mark! He proceeds as follows: 'These affidavits establish conclusively, and to my entire satisfaction, that this case is one of the manifestations of a conspiracy against the defendant organized by a combination of some of the lowest and most debased of people, uniting with some who are not in appearance so degraded; but, altogether, they constitute a small band of the lowest and basest and infamous and prominent.' What does he mean and whom does he mean by these insinuations? Has he gone quite mad? Has his fear of me and of my presence magnified *me* into an army—into a whole rebellion boiled down? What does the learned attorney mean by 'this case being one of the manifestations of a conspiracy'? We are not in a spiritual court. If, as he charges, I am a conspirator to ruin the moral character of the distinguished gentleman who is the defendant, and to impair his political influence in his senatorial capacity in regard to matters now pending before the councils of the nation, then, your honor, I am guilty of high treason, the highest crime known to the state; and if this attorney had believed his own words, he would have caused my arrest before I left this court-room yesterday, and it would have been his duty as a loyal citizen to have done so. Aye! he would have summoned me to this court room to defend myself against so gross a charge. Aye, sir! these words were not intended for the furtherance of justice, not for honorable debate, but to awaken prejudice and suspicion, and to influence *ex parte* the action of this court. And I desire to say here that I have no animosity against the defendant in this cause, and I could not, if he had one, injure his moral character. Character, your honor, inheres in the individual; it is the man—qualities impressed by nature, to which I could not add or detract.

"Who, then, are these dangerous conspirators? Myself, and this hunted and unfortunate woman? This babe without a father? Where are these lowest and most debased of people? If he refers to me, your honor, I challenge him to produce my record; if he refers to my client, I indignantly deny the charge, and throw back in his teeth the base calumnies that have been perpetrated against her. 'Uniting with some,' he goes on to state, 'who are not so degraded, but altogether they constitute a small band of the lowest and basest and the infamous and prominent.' A small band, indeed, your honor—two weak women, magnified not only into

state conspirators, but into monsters, the one hungering for bread, the other pursuing her daily avocations. And just here: I have never at any time consulted any person except my client about the bringing or the prosecuting of this suit with the exceptions of Benjamin H. Hill, jr., and James Banks. If these are the conspirators to whom this learned attorney refers, then to a certain extent I agree with him, and pause to admit that, after repeated interviews, they did induce this poor woman to go back on her word, after threatening me with arrest for conspiracy and blackmail, if I dared to bring this suit. Since my admission to the bar of this court, and the taking of its oath of office, I have only done my duty to it and to my clients. My professional honor is worth more to me than money, and I allow no man to assail it with impunity, even though he be my senior at the bar. I have not yet sunk so low, nor have been so devoid of business as to bring a pauper suit against the wishes of my client; nor have I been so poor and abject as to levy blackmail against a United States senator for the purpose of extorting from him a few paltry dollars. My crime has been that I have sued a senator as I would have sued any other man; that I have asked him to remember the ties of nature as I would have asked any other man; that I have asked him to keep his pledges as any honorable man would have done; aye, that I have befriended this unfortunate woman, who, like Banquo's ghost, will not down. I am charged with conspiring to impair the political influence of this distinguished defendant. Your honor, it was not until this learned attorney had thus delivered himself that I knew that he had any political influence. I do not yet know, your honor, what the important matters now pending before the councils of the nation are in which this great senatorial brain is busied. I am innocent of political intrigue or of political aspirations other than the one great effort which has been a part of my life-work, to place my sister woman on an equality with man. I demand, your honor, as our right that the affidavits alluded to, which this learned attorney says 'show the object of this conspiracy,' be produced. It is our right that we may be able to meet fact with fact, and falsehood with refutation. As it is, a hundred innocent people are suffering under the imputation of conspiring with me. Are they black or white, men or women, democrats or republicans? and what have I to gain, and what is to be my reward? Is it not just possible, and more than probable, that this monster conspiracy had its inception and its origin in the fertile brain of this attorney and his coadjutors?

"And I desire to say here, your honor, that my connection with

this case has been entirely honorable and above-board. I have had no collusion or consultation with any party or parties in regard to it. I have brought this suit precisely as I have done in similar cases, because I believed there was an occasion for it, and as I shall do again whenever I consider it my duty; and I challenge investigation into my motives or my action in this case. The parties who have raised the cry of libel and blackmail have resorted to it for the purpose of diverting the public mind from the real facts in the issue. Instead of making the issue against the plaintiff in this suit, there has been a determined effort to put me upon trial, and I believe that I have stood and am willing to stand the trial. Whatever weaknesses I may have, cowardice is not one of them nor disloyalty to my client another. I could not, therefore, allow this court to misunderstand my position. Whatever the outside world may think, can matter little to me—an humble, domestic woman; but what my friends think, and those with whom I come in daily contact, is vital both to my happiness and my pecuniary interests. I now ask your honor that this judgment, to which my client is entitled, be granted."

ELEVATED RAILWAY CASE.

Tried in the Superior Court of N. Y., Jan., 1880.

ARGUMENT BY BENJ. F. BUTLER.

The American bar are generally familiar with the pithy and pungent style, the singularly successful manner and wide reputation of Benj. F. Butler as an orator. His art is known as well on the frontier as in Congressional discussions and among the factory hands of his native town at Lowell. It is a pleasure to hear him at his best. It is a surprise to listen to his pathos and incisive expressions; but his element of strength is the heroic—the whirlwind of invective, the storm of passion, that brooks no defeat; that, even after many failures to be governor of his state, only stimulates new energies and braver endeavors. Gen. Butler is a bold speaker. He is a brave speaker; a strong, logical reasoner; his words full of force are propelled with power and vehemence. He wins his cases by determined labor, by toil, and a name for winning them. He commands his juries; he demands large ver-

dicts ; he inspires men by his magnetism. He asks and receives decided attention and excellent fees. Even so brief an extract as the following will give a glimpse of his strong and original style of composition. In it is power, pathos, ingenuity and strong thought, with very little waste of words; there is a real beauty of simplicity.

The case about to be reported is where an injunction was sought by Mr. Caro to restrain the erection of an elevated railroad past his dwelling on Sixth avenue. New York, on the grounds ably set forth in the argument.

There is a special feature of this address worthy of note. He does not "crook the pliant hinges of the knee" even to judges. He talks of his client's rights ; of his redress ; of his demands : and denounces the foolish, fawning course of counsel.

The passage of the scenes in the family sick chamber, with loved ones listening to catch the child's last words of life, the father "dealing out the potion drop by drop," is as graphic as the scenes of Macbeth. The pathos is touching.

Gen. Butler's manner is somewhat labored and heavy, but the anxious interest follows him for hours, as the ponderous sentences follow each other in a long line of compact and almost irresistible logic to a conclusion, reasonable and extremely probable. His gestures are largely of the Websterian, heavy make, and all the way along he seems to be reaching out after an undiscovered thought, till one feels like saying "enough, enough," long before his conclusion is reached.

In his famous phillipic on the Indianapolis editor, in 1872, there were times when over one hundred men, out of the ten thousand audience, stood upon their seats, with flashing eyes and hands striking together, with a hearty ring, shouting, "Hit him again !" "Hit him again ; d—n him, hit him again !" "Give it to him ; give it to him !" Then, with that wonderful coolness, he would wave his broad hand, fanning like an eagle's wing, and hush the vast audience to silence.

In his speech to two thousand fishermen on the sea coast, all in their working garb and intensely interested, he grew eloquent, witty and powerful, but no murmur of applause arose. He wondered, but went on, hit after hit, and no response to the end. But when he closed, men, women and children shouted and applauded in the wildest manner. Surly-looking old fishermen would nudge each other, and repeat his jokes with a relish. It was not their custom to applaud while speaking.

In the railway case he said:

May it Please your Honors :

At the close of the lawyer-like, close, and carefully put argument of my learned associate yesterday, it seemed to me that there was nothing left for me to say. A pure, dry, bare question of law, interesting only from the importance of the principles involved, had been argued upon carefully collated authorities, adapted to the various aspects of the case.

After such a reaper, there is but little left for the gleaner.

But the course which the discussion took afterwards seems to render it necessary for me to call your honors' attention to certain matters which I believe to be fundamental, and which, for the first time in the course of forty years' practice, have I heard brought into dispute, and also to remove some of the *impedimenta* which have been thrown in the way of our receiving justice at the hands of the court, by the opposing counsel.

Personally, if not wholly, a stranger to your honors, I cannot begin my argument as some of the arguments have been begun—by a eulogy upon the court. I never pay compliments where none are needed. I am certain, from the course of this investigation, that I shall receive a patient, attentive and careful hearing, and that is all that my client can ask in the debate of the cause ; and I feel, notwithstanding the appeals that have been made to your honors, that, after the hearing, my client's cause will receive at your hands careful, patient, righteous investigation and judgment.

* * * * * * * *

If that law provides, as we think it does do, in one or other of two forms of construction, that the respondent railroad shall pay for damages which they do by injury to citizens through a commission or otherwise, then the law is a constitutional one. If the statute does not so provide in some form, then the current of authority is so universal and so strong that there is left no ripple to show on the surface even, that such a law can be constitutional.

We believe it to be constitutional. Every intendment should be made in favor of the law. It should not be so frittered, or, in the nervous language of Gibson, "filed" away as to render it unconstitutional. Therefore we admit that there is a constitutional law authorizing the defendants to build an elevated railroad upon the street in front of our dwelling, and that elevated road is to be built according to their will and pleasure as to manner. In that, the law provides no restriction whatever. It may be built on posts; it may be built on a solid structure to support its rails along the street, one foot high, ten feet high, or one hundred feet high.

Therefore, there being no limitation to the will of the builders of the road, it seems to me that the law has left the question of reparation for injuries done to the citizen by the structure and operation of the road to be ascertained from the manner, as the extent of them must be determined by the manner of building, to be adjudicated by the proper judicial tribunals, which is one of the ways in which the law may provide that the constitutional protection of the rights of the citizen that private property shall not be taken for a public use, or appropriated without reasonable compensation, may be enforced. * * * *

"If the land is rendered less valuable because it is more exposed to fire; or if access to it is rendered more difficult; or if the use of the remainder is more inconvenient by reason of the railroad; or if its value is depreciated by the noise, smoke, or increased dangers caused by the use of the railroad—all these are to be included in the estimate of damages. Not that witnesses are to be called upon to estimate damages for each or any of them; for though they enter into the estimates, the question is, what is the market value of the whole land without the railroad, and what is the market value of the remainder of the piece with the railroad? Or, in other words, what is the value of the piece which is taken, and how much is the residue depreciated in its market value by the separation and the construction of the railroad? which two sums added together is the amount of compensation to which the appellant in this case is entitled. I have no doubt that the increased risk by fire, if any, is properly included in this estimate."

So, may it please your honors, the argument put with so much force, vigor, power, and earnestness, as to whether Mr. Caro is not obliged to smell the smoke and hear the noises of running trains, had all been decided years ago under the able and skillful guidance of my learned friend who made respondents' argument yesterday, and the same principles have lately been reaffirmed.

We come to another matter, which I approach with great diffidence and reluctance:

I have been, all my professional life of forty years, except when I have been carried away in misspent time otherwheres, before courts of justice advocating, in my poor way, the rights of my clients. In the supreme court of the state, where I have most practiced, its seal is emblazoned over the seat of justice for an escutcheon, declaring the principles on which the court acts, always standing out from the wall before the advocate for his

guidance, who ought to watch it as the mariner does his guiding star of the pole. * * * *

Who and what are the judges of courts? They are the representatives of the law; the representatives, so far as human, erring nature can be, of eternal and impartial right.

Such has been my teaching; may it please your honors, such, I believe, the teaching of the books of law; such the lesson of the garnered wisdom of the common law for a thousand years. To put the judges as far as possible beyond all motive, in the mother country, from which we draw our laws, they were made independent of kings, to hold their places for life. It was their province, *jus dicere non jus dare.* To declare what is the law between party and party, and not to make the law, which was the duty of the king, parliament, and people.

Imagine my surprise—I will use no words of characterization, for they fail to meet the occasion—when I heard your honors appealed to, as the "representatives of the people of the city of New York," to decide this case in their interests. Imagine what I, a stranger to you, felt when I heard a venerable lawyer, with my client's great interests hanging trembling in the balance of justice, appeal to you, not to give him justice, but to deny it to him. You were told to send him to some other court, or, as the phrase was, "if this [*i. e.*, judgment given in his favor] must be done, let it be done by an alien hand," and this hand was pointed out by the remark that we had threatened to go to "some alien tribunal." That could only refer to the fact that we put in our complaint that this injury and wrong done us was in contravention of the constitution of this state and the United States.

After numerous citations of authorities, with elaborate comments upon each, he continued:

And therefore we said that we invoked, and we mean to invoke, the protection of this provision, and that is why it is in our complaint; and also for one of the very good reasons for so doing, that if anybody shall say that the word "taken" has so technical and "filed away" meaning as not to cover this species of our property, then we invoke the constitution of the United States that no state shall deprive us of any property without due process of law, we being citizens of the United States.

May it please your honors—You have seen the ideal of Justice as her figure has been handed down to us in the dreams of the sculptors and philosophers of the olden time. She holds her evenly-balanced scales, and her eyes are bandaged. What for? That she

may see none of the consequences of declaring the right, the truth of the cause; and the legend which she bears upon her girdle is *Fiat justitia ruat cœlum*, "Let justice be done though the heavens fall." And yet the eyes of Justice, looking from the bench here, were invoked to look outside of the record—to look at the possible consequences of deciding right! For what? To sway the judgment of the court in their administration of the law against the right of the poor and humble, in favor of the rich and powerful. God help us, when it comes that this may be argued in a court of justice in the most enlightened state in this Union, as well as the most powerful!

Again: Let me illustrate the effect of such appeals upon men's minds to give you an idea of how they bring contempt on the administration of the law. Your honors will not misunderstand anything I say, for if I thought such appeals could have any effect upon your honors I would fold up my papers and go away. To show, I say, what laymen think, my client came to me yesterday and said, "What do you think of my case?" I said if there were only five thousand dollars involved I would not argue it, it seems so plain. But as it is, God knows we must argue it.

My duty to the court and myself made me stop there. If your honors can be influenced by such observations in your decision of this cause, of course you will write them out in your opinion, so that all the world may see the basis of judgment. If you could be influenced by such argument you should put it on record, so that we could understand that when the growth of the city of New York is in question, nobody has any rights of property in it. If it is not proper that such things should be written in a decision, the idea of doing which seems to excite a smile on every countenance, ought any argument to be addressed to the court that is not proper and right to be written in the decision, or opinion, in the cause, to influence which it is made?

I pass from this somewhat painful part of the argument.

True, may it please your honors, the principles which we present here for our protection are as old as eternal justice. To borrow an illustration from a profession in which for awhile I misspent my time, and with which I was playfully and good-naturedly taunted yesterday, the profession of arms—it is true our arms are not new, bright or shining—the shield we interpose between our client and great wrong is war-worn and dented all over with many a thrust and giant blow from the tyrant, aimed at the People and their rights; the sword we draw in our defense is like Excalibar of King Arthur, hacked all along its edge in warding off many a stal-

wart blow aimed by the Demon wrong; but our buckler is still strong and powerful, our sword trenchant, and sufficient to defend and save the humblest and lowliest from the deadliest onslaught of wickedness and oppression, however combined and confederated, even under the sacred name of law. Nay, more; our great shield of constitutional rights has been, by the fourteenth amendment, lately brightened and polished so that it blazes before the face of injustice as did the shield of Richard Cœur de Lion when he flashed it in the face of the Saracen. It is the eternal principle, new and old, old and new, and I speak with reverence when I say it might be said of it, "Before Adam was, I am," that no citizen's property, to the least pin's worth, shall be taken from him for any public use or private purpose without due compensation. For private purposes not at all. For public purposes only upon compensation.

* * * * * * * *

Now I submit that this was a base or qualified fee, because the only use that New York could put the land to was to keep it open as a street forever, as other streets were; and it is not in dispute that there was neither horse, steam elevated or depressed railroads in the streets of New York at that time. The city received a fee in the sale to keep upon the surface a street there. What did this bargain and sale leave in Mr. Bertine belonging to the remainder of his land? What did he give up the adjoining for? To have a street in all that the name implies. What is that? A means of access for himself and others to his dwelling on that line, to be wrought for travel by the city. Lighting at night, guarding by day and night. So much, clearly, he was to have for what he gave up. What else? What everybody has on a street—light and air to come in over that street to his house or to his land. In other words, the city took the street in fee, subject to easements to go over the soil; *second*, for the free light of heaven to come over the street; and, *third*, for the pure air to come into his house; and he and those claiming under him enjoyed those rights unrestrained and unmolested from 1838 to 1878, more than time enough to prescribe under the common law for the right, as against the fee in an adjacent lot. My brother fritters all these easements away to the right of access upon the soil only. He says that is the only thing which a "street" means.

Then the whole of Broadway can be roofed over tight.

* * * * * * * *

That is, we have a right to the possibility of the enjoyment of our eyes in the light of heaven, in our own house; to the enjoyment of our ears in our own house; a right to the possibility of the enjoy-

ment of our own homes free of insults. Why do you and I want a dwelling? To live in by day and sleep quietly in by night, undisturbed; and still more, that our children, the wife and mother, may live there in undisturbed quiet at all times.

But now so it is in this dwelling—when the heavy hand of sickness has stricken the loved one, and she lies wearily upon, it may be, the bed of death, and with prudent care the window is opened to let in the pure air to aid the gasping breath; when with careful thought the rays of sunlight are so adjusted as not to offend the sleepless eye; when all is hushed in calm quiet, so as to soothe the throbbing brain, maddened by the tension of the overstrained and overwrought nerves; when the weary watcher sits tremblingly fearing less the sobbing call of "mother," by the sweet voice of childhood, may loose the "golden cord" which binds the sufferer to earth; when, perchance with hand made firm by loving duty, the father measures out the potent medicine, drop by drop, which he fondly hopes may save his beloved to him and hers—then the overcrowded, long-extended train of cars is driven thundering by, with the stench of suffocating gas; the flashing light of the baleful engine-fire closes with its glare the glazing eye; the uproar shocks into palsy the quivering nerves; the chamber of death is filled with clouds of smoke and sulphurous gases, choking the parched throat, closing the quivering nostrils which can no more breathe the breath of life forever; but when the darkening shadow of the train has passed, the returning daylight comes back into the murky, smoke closed room to light up a pallid face, now clay, mourned over by bereaved husband and orphaned children as of one untimely taken.

This is no overdrawn picture of what does now happen, but never can happen in a street kept "open for public use as the streets of New York were, and of right ought to be, kept open, and appropriate," where kind neighbors, from block to block, would cease playing even on the piano in pity for a sick sufferer.

* * * * * * * *

Surely this is a new taking and a new use of the street.

Yet here in this temple of justice I am told that we must bear all this. That my client must look forward to such a death-bed for himself and his loved ones, and has no redress by the laws of the land. If that can be so, let me reside in some country where the people can temper despotism with the dagger—where the men who are protecting the rights of the citizen are beginning to use that method of stopping oppression. It would be more tolerable under a despotism, for that is one against the many. But here in

New York the might, with the power, the wealth, the many are against the one, from which there can be no redress if the passions and motives which were invoked against Mr. Caro, who sits here, an old man, are to prevail as the rule of law. * * * *

What does he say almost in the very next sentence? "See the great net-work of railroads running through this land to every village, bringing millions upon millions of property and thousands upon thousands of men into the city daily. See all that has been done by this great system of railroads, and will you stop this last great public improvement in the city?" Why, my friend, were not all these great systems of railroads radiating from this city constructed under exactly the principles of compensating owners of private property injured, we set up here? Make your road where you please and how you please, but pay for the injuries you cause in so doing. And has not every one of the surface railroads been made exactly under those provisions? Has the application of this principle stopped this great system of railroads? Not at all. Even brother Porter, when he interposed for the church, didn't stop the railroad. They paid the damages, and went on just as though nothing had happened.

* * * * * * * * * *

The legislature says to them, build your road; the state sends you out with this valuable charter, but upon it is written in fact the old time maxim of the common law, *Sic utere tuo ut alienum non lædas.* So use your own as not to injure another. Theirs is the same title only by which we hold all our property everywhere under all circumstances.

The amount of the injury, as is alleged, is "enormous;" but it is of no avail to discuss the question of damages. Nominal damages only will answer their demurrer.

May it please your honors, we have brought our client into this forum, one appointed by the laws of the state in which he lives, respectable in its history—nay, more, known for its exact justice—when in the hands of those who have respected the places they occupied; and we bring him here shielded by the constitution, guarded by the sword of the law, surrounded by every right that is known to justice. We show him deprived of his home, that home which, if it were a hovel only, the common law says the king might not enter, although the winds and rains of heaven might pour through it. That home has been invaded by physical objects, stenches, impure air, and sounds, thrown into it by the respondents —the same force that breaks the glass out of your windows when the cannon is fired beneath them.

We ask to his case so presented all of the investigation, acumen, and examination of the law that its great importance calls for, and if the court find he has been wronged, we DEMAND judgment of remedy at your hands, regardless of the call of my brother upon you that the court turn him over to another tribunal, because it is an unpleasant duty to "give judgment against neighbors and friends."

THE CALLAHAN-TORMIE CASE.

Tried at Wooster, Ohio, March, 1880.

The interest and excitement of a city murder trial fades and diminishes to a common-place occurrence when compared to a great trial in a country village. The farmers leave their fields, mechanics their shops, and the entire community is absorbed in the one idea of the tragedy.

The first case of the kind that ever occurred at Wayne county, Ohio, in a staid and substantial farming region, where morals and prosperity have gone hand in hand for half a century, may well awaken an intensely exciting interest; and while the real material for well-composed paragraphs in the eloquent arguments are wanting, there is enough in the graphic story of the Wooster press and notes of counsel, to give a general idea of the event—as much as can be given without the speeches in full and the details of the evidence and trial.

But a single element of interest was wanting to make this one of the most celebrated cases in Ohio. *There was no mystery in the killing!* It was a running fight in a public fair-ground. This left the contest at the trial as to who provoked the murder.

A full illustration of Callahan and Tormie, the scaffold, the coffin, and the hanging, with the details of the conviction and execution was extensively circulated in the county and surrounding country and became a topic of general interest.

To those that have never marked the difference between direct and circumstantial evidence, this will remain an ideal village murder trial. But to the country at large the deepest interest always follows the greatest mystery. Men become most absorbed in that

which no one can fathom—a series of facts just clear enough to excite the mind, and lacking enough to convince the judgment just how the matter happened, is the real foundation for eloquence.

The prisoner was brought into the bar by Sheriff Coulter, and was accompanied by his father and mother, who are respectable Irish people, residing a short distance east of Wooster. Five months' incarceration in jail had much improved his personal appearance, he being a good-looking, intelligent young man of about twenty-one years, neatly dressed, with no indications of viciousness in his countenance.

While there was no public disturbance, Wooster never knew such an exciting time as during the progress of the trial. Wrought-up crowds for eleven days packed the court room to almost suffocation, filling all possible space to the number of two thousand men and women, some, in their anxiety to witness the proceedings, even bringing their little children and crying infants. This was especially the case during the arguments of the counsel, more particularly those of Lynch for the defense and McSweeney for the prosecution, and during the charge of the court.

The representation of women of all classes was remarkably large the last few days of the trial. Long before the hour to open, they, with the men, almost ran along the pavements to get to the court house, excitably besieging the doors for admittance, and then in a breathless way rushed up stairs to secure seats. When the seating capacity was exhausted, the later arrivals kept crowding on, male and female squeezing into any possible space, filling the bar, the steps of the judge's stand, and even to places on the bench beside his honor — everywhere they could stand or sit, even flat on the floor—giving no room scarcely for the court, counsel or jury to move. Such a scene must be witnessed, as it is indescribable.

Mrs. Tormie succumbed to her feelings during the testimony of the surgeon explaining the wounds and last moments of her slain husband. Mrs. Callahan, the mother of the prisoner, also gave way on one occasion. Frequently many men and women were bathed in tears, particularly during the pathetic recitals by counsel. As the natural result of so much nervous excitement, the oppressive air, etc., several women, at different times, fainted and had to be carried out. One juryman, who had been ailing, also nearly fainted away, and had to be removed and a physician called, necessitating the adjournment of court for a time. There were many scenes and incidents of various kinds, well illustrating the inside of human nature.

The presiding judge, Hon. C. C. Parsons, was kind, tender, and mingled justice with mercy throughout the long and exciting case, the story of which appears in the arguments.

ATTORNEYS.

C. A. Rieder, prosecuting attorney, and Hon. John McSweeney appeared for the state; and William A. Lynch, of Canton, and John McSweeney, Jr., for the prisoner.

Hon. John McSweeney, of Wooster, for a quarter of a century has stood as a bright light in the great galaxy of Ohio's distinguished advocates, and a more celebrated criminal lawyer is not known in the state. A man nearly sixty, strong, large, of powerful voice and tragic delivery; an extempore speaker, with the hot, impetuous eloquence peculiar to his nativity; he impresses his juries with the gravity of the case, the magnitude of the issue, and then plays upon their passions like a master on an instrument. He has that peculiar oratory suited to a country jury, that captivates, enthuses, convinces and wins his cases. He is received in Ohio suits as a star actor in a play like Virginius. Although he often argues at great length, and grows bitter, vindictive and sarcastic, on this occasion he was tender and considerate, and all the more effective.

Wm. A. Lynch, Esq., on opening his argument, briefly expressed his profound gratitude to the court for the fairness and judicial impartiality accorded him and his associate counsel in the conduct of this trial, and the uniform courtesy and kind treatment received at the hands of the opposing counsel. In first addressing the jury he spoke in befitting terms, that he felt the solemn and immense responsibility imposed upon him and his associate counsel, when he considered that the life, liberty and future hopes of the young prisoner at the bar was committed to such weak hands. When he considered the anguish of heart of this poor mother and this kind old father and affectionate sisters, he said he was appalled at the situation. But he said he was not without hope; that there was a just foundation for it, and that all he asked of the jury was their careful consideration of all the testimony in the case, and that they should ingraft upon their hearts the precepts of the law—the law of the land, as it would be expounded and given to them by the court, and after all this, he felt that he could safely entrust the fate of this young man—his life, his liberty, his all—to the sacred keeping of this honest and impartial jury. Mr. Lynch then proceeded with his argument of some eight hours in length, and closed

with a fine peroration, in which he embraced the opportunity of forewarning the jury of the terrible power, and irresistible, persuasive eloquence of the learned counsel who would follow him and close the case. He said that in many contests in which he was associated with him or pitted against him in the legal forum, he knew the force of his logic, his thrilling comparisons and illustrations, his captivating manner, his terrible invective, his fierce denunciation, his stirring, sympathetic appeals, his mastery, by the power of his eloquence, over the hearts, minds and feelings of his audience, and how he would sometimes even warp his own judgment. He asked the jury to fortify themselves against such almost irresistible influence and power.

ARGUMENT OF MR. McSWEENEY.

He commenced the closing argument for the people at four o'clock, in that slow, measured, and impressive manner that hushed the vast audience to a silence almost painful from the beginning to the close of a long and eloquent address.

The speaker opened by saying:

Curran, the Irish advocate, was on a special occasion brought down to the county of York to assist in the prosecution of Sir Henry Hayes, for a capital offense, and, in opening his address to the court and jury, said:

"I cannot forget upon what very different ground from that of the learned counsel for the prisoner I find myself placed. It is the privilege, it is the obligation of those who have to defend a client on a trial for his life, to exert every force, and to call forth every resource that zeal and genius and sagacity can suggest—it is an indulgence in favor of life—it has the sanction of usage, it has the permission of humanity, and the man who should linger one step behind the most advanced limit of that privilege and should fail to exercise every talent that heaven had given him in that defense, would be guilty of a mean desertion of his duty and an abandonment of his client.

"Far different is the situation of him who is counsel for the crown. Cautiously should he use all his privileges—scrupulously should he keep within the duties of accusation; his task is to fairly lay the nature of the case before the court and jury. Should he endeavor to gain a verdict otherwise than by evidence, he were unworthy of speaking in a court of justice. If I heard a counsel for the crown state anything that I did not think founded in law, I should say to myself, God grant that the man who has acted thus

may be an ignorant man, because his ignorance can be his only justification. It shall be my endeavor to so lay the matters of fact and law before you as shall enable you to clearly comprehend them, and finally, by your verdict, to do complete justice between the prisoner and the public."

And, standing in my place to-day, a position entirely unsought, but filling an appointment made by this honored court, that, as a member of the bar and as an order-loving citizen, I dare not decline. I further declare that the lawyer who should attempt to procure the conviction of a prisoner of a high crime for the mere gratification of any desire for personal triumph or professional glory, would thereby prove himself unfit for the position of a public prosecutor, and in such hands the trial of an alleged offender would degenerate to a mere *persecution.* And an attorney impelled by such unworthy motives, even if successful, would gather only withered leaves and faded flowers for his victor-wreath, and would not have moistened his lips with one drop from that perennial fountain, whose living waters can alone quench the thirst of an immortal for true glory and lasting renown. Nor would he by an ill-starred triumph, obtained by motives such as I have indicated, ascend one step of the rugged side of that mount on whose bright summit fame's proud temple shines afar. I will none of such triumphs, nor would I bring down on myself the frowns and just censure of a chivalric profession. I may call things by their right names; I may strike hard blows, but they shall be fair ones, and after a full and candid discussion of this case, involving, as it does, the liberty and life of the defendant at the bar, I shall ask you to render such a verdict as will not in the great hereafter be quoted as weakening any of the safeguards of society, nor as giving encouragement to the infraction of that great command—"Thou shalt do no murder."

"Having thus crossed the threshold, Mr. McSweeney then proceeded to deliver what may be justly termed, like in speaking of Webster's speeches, a great speech, worthy of his distinguished abilities, and perhaps not excelled by any of his former efforts in Wooster. It is certainly true, as Mr. Lynch intimated, that he had to contend with the genius, the renown, and the popularity of a most eloquent and powerful adversary. He seems to be in the meridian of his intellectual faculties and reputation. In the course of his speech he indulged in those lofty and passionate flights of eloquence in which he excels, and in that terrific declamation which was set off by looks, tones, gestures and actions worthy of the great Garrick. In his whole argument

He waved his scepter o'er his kind,
By nature's first great charter—mind.

"When he discussed law he was profound and learned. When he dilated upon facts he was fair and logical, deducing his conclusions with unerring precision and crowning effect, and always showing the versatility of his mind.

"The first portion of Mr. McSweeney's speech was grand in the extreme. Never was such a scene witnessed in our court. It was heart-rending, and yet frightfully appalling, especially when the speaker gave vent to that thrilling burst of eloquence in describing and almost re-enacting the death-scene on the Fair grounds, and when he said, "Make room for poor Tormie! Make way for dead Tormie!—room for shrouded Tormie!" he sent terror into the heart of the accused, and aroused the utmost pity for the dead. It seemed as though

He would drown the stage with tears,
And cleave the general ear with horrid speech,
Make mad the guilty and appal the free,
Confound the ignorant, and amaze indeed
The very faculties of eyes and ears,

so indescribable was the scene and the effect of that overwhelming evidence.

"In making his appeal to the jury, in the spirit of candor he admonished them out of mercy not to sit as a board of pardons, but if the facts warrant it, and if they found 'guilty' beyond all reasonable doubt, not to shrink from doing their duty, and strike, unmindful of the consequences, like the blind Goddess, who deals her unerring blow in justice's name, though her knife be ofttimes bathed in tears."

Judge PARSONS expounded the law in a clear and forcible manner, making the legal definitions plain to all; and then presented a summary of the evidence that the state had produced, describing how the trouble commenced at the Fair grounds at dark on the evening of October 2d, 1879, the running fight, the clubbing and stabbing to death, for being one of the participants in which the prisoner at the bar stood arraigned under an indictment for murder in the first degree.

The prisoner was found guilty and hung December 3d, 1870, having secured a reprieve of ninety-eight days to await the decision of a writ of error in the Court of Appeals, which was denied.

THE PORT HURON RAILROAD CASE.

Hon. Stanley Matthews as an Advocate.

A wise man has said of eloquence, that its foundation is wisdom; that it is "speech combined with the greatest pleasure to the hearers;" that "it steals in upon the senses and implants new opinions in men;" that through it the mention of antiquity gives credit and authority to the speaker's words. This was an instance.

A long contest over the railroad from Flint to Port Huron, from 1876 to 1878, ended in a suit in the United States Court for the Eastern District of Michigan, in which Hon. Stanley Mathews of Ohio appeared for Mr. Vanderbilt's interests, in an able argument of four hours' duration.

Mr. Mathews is a large, strongly built, earnest man, nearly fifty-six years of age, with full, heavy, brownish beard tinged with gray; dark brown hair and deep-set dark gray eyes; a commanding manner and a powerful voice, under fine control. He speaks with a dignity and precision that makes each word stand alone and holds the closest attention, even in a legal argument. Before he utters a word, one can read great sentences in his eyes. From the first he asserts himself, and to the last is brimful of intense, stalwart courage and imperial determination. Few men use choicer language, stronger sentences, or more magnetism. He is aggressive and yet obliging; his conclusions are full of point and vigor, and when reached seem unalterable. He builds his logic as of granite rocks, and cements them after the old Roman fashion, to endure forever; saving his keystones as a crowning arch, he fits and matches them with the skill of a master builder.

No report of words can do him justice. It is the delivery—the deep, impressive, giant blows, that carry conviction.

"This man," said he, "that is charged as a reckless manager—that is branded with epithets and loaded with unseemly behavior, who is he? Why, your honors, he is the father of the road! He is the manager of the enterprise; requiring hundreds of thousands in money, while he himself is poor. He has passed the age of sixty years in honorable pursuits; he has battled with fate, without funds, and failed. Is he alone in this? Have not others reached a hopeless struggle like his and went down in honor? Few men, even of

genius and capacity, pass the age of sixty years and see their bright dreams realized. He is no exception. It is not dishonor; it is want of wealth that foils his plans. At his age he has seen sorrows, he has met reverses; it is no time to question motives, but in this emergency, with the outward frame of rolling stock; and even track, we come forward with means to breathe new life into its half-created form; we come with the power to lift the weight; we come with the checks to pay the men; we come with the bond to make them secure; we come to link this to a chain of iron bands that skirt and rib and span the nation! We ask to give it life and energy and power to carry palaces through the air. And I'll tell you, your honors, how. Here is an affidavit; it is no part of this bill, but sheds light on it and furnishes good reading, and I'll read it now."

Here he reads and argues, gives figures and plans, and after an argument reaching nearly till dark, with his face all aglow with intense animation, his eyes beaming with determined fire, his hands and arms surcharged with that trembling, half-waiting gesture, but dignified and impassioned manner, he closes in words nearly like these:

"And now in view of all these facts, and of the vast interests at stake, of the large sums involved, of the general good to be attained, of the responsibility, sirs, that you assume, I shall ask but one, reasonable request, and when I shall ask it it will be in language so plain, and with equity so clear, that to grant it will do justice to every creditor, every laborer, and even the plaintiff and defendant, alike. I will found my request so thoroughly in reason that my brothers will concede no better plan has been devised to give the relief prayed for in the bill. *I will* now ask, your honors, that this court shall give Mr. Vanderbilt the management of this road from now henceforth, and shall offer a bond of ample security for $300,000, to secure every laborer, contractor and corporator, each his own. And in this demand I appeal to the highest conscience and gravest dignity of the court, to the character and high standing of your honors, to your mature judgment, from which, practically, there is no appeal, but which, when rendered, we trust, will be final, and so equitable that we shall feel that wisdom and honor and conscience have combined to make it indeed a just decision."

During these long sentences one would feel like saying, with the populace to Mark Anthony over Cæsar's body: "Read the will!

read the will!" long before he reaches his conclusions. By his intensity, his holding on, his vehement and determined language, his bold, defiant and expansive logic, he commands a court and expects obedience.

His request was, practically, granted.

THE BIBLE IN THE SCHOOLS.

Trial at Cincinnati, 1870.

The discussion of political and moral questions as often falls to the lot of leading advocates as arguments to a jury. Formerly the advocate was the instructor of the people, while, in our day, the press does the preliminary part, and the courts generally end the controversy.

The discussion of this question commenced and ended in this manner. The entire country was intensely interested; dispatches were daily cabled to Europe, adding new fame to the orators and heat to an excited contest, that called for all the learning and acumen of counsel.

Stanley Mathews met and mastered the subject with great skill and thoroughness. Did space permit of a full review and extended quotations from his address to the judges, more would be given. But only the briefest story can be related, which is: In November, 1869, John Minor petitioned the Superior Court of Cincinnati for an injunction to restrain the School Board from enforcing a resolution passed by them, which *repealed* a former resolution requiring "the opening exercise in every department to commence by reading a portion of the Bible under direction of a teacher, and appropriate singing by the pupils." A temporary injunction was granted. The board claimed the court had no jurisdiction.

The arguments of the question lasted five days. Messrs. Wm. M. Ramsey, Geo. R. Sage and Rufus King, for plaintiffs; and J. B. Stallo, George Hoadly and Stanley Mathews, for defendants. Mr. Mathews grew very earnest and eloquent, and made by far his greatest argument; opposed by public opinion, opposed by the court, only intensified his research and delivery. He gave a brilliant and beautiful apostrophe to the Bible, which appears near the close of his address. Judge Stallo made a humorous address;

Judge Hoadley a very able legal argument. In fact the six arguments were all able, notably that of W. H. Ramsey.

Mr. Mathews said:

May it Please your Honors: It would cost me a very painful physical effort to appear to-day in any case; it has cost me a very difficult and painful mental effort to appear in this. It is easy to swim with the tide, to go with the current, to follow in the wake of the multitude. To do things that are popular is not hard. But to stand by a man's individual moral convictions, in opposition not to enemies, but to friends, tries a man. If your honors please, it tries me. Except the loss of dear children, this is the most painful experience of my life—to be told that I am an enemy of religion, that I am an opponent of the Bible, that I have lost in this community my Christian character, and that my children and my grand-children will reproach my memory for this day's work. For all that, and more, has not been whispered merely through the crowds, but has been told me to my face. If your honors please, I would be silent to-day, if I dared, but I have no choice.

Believing, as I do, that an appeal is being made to this court to wrest the law to an illegal end, as a lover of my profession, I am under a professional obligation to withstand it. Believing, as I do, that doctrines the most dangerous and mischievous to the value and safety of our glorious system of public schools are being preached and promulgated, doctrines that are equally as dangerous and mischievous to civil order and the safety and peace of the state, as a citizen, I feel under still higher obligations to oppose them. Believing, as I do, that this suit and the principles on which it is maintained, and can only be maintained, cause a book, that I believe to be of no human origin—to contain the very words of God—to be made the subject legitimately of public criticism in a court of justice, and only next spring to be bandied about as a foot-ball between political parties, and a religion which it is the greatest honor and pride of my life to be able to-day to stand in public and confess, to be made the watchword of contending factions in the state; believing that both that book and that religion are thus discredited, as a lover of the one, and as a disciple of the other, my responsibility to God and my conscience will not allow me to do anything else than to speak.

I do not, indeed, doubt that the majority of those whose views I am opposing, are actuated by sincere motives and an honest desire to do what seems to them to be right, and believe that their ocurse is necessary to preserve the honor of religion, respect for

the Bible and the best interest of the state. It is natural enough that they should feel with some sensitiveness the rudeness of an unexpected shock to their prejudices, hardened into habits by the practice of many years; and that they should resist and resent what they regard as an attack upon religion and an insult to a book they believe to be divine, without inquiring whether, without regard to the motives of individuals or the reasons which governed them, the action of the school board, considered in its legal aspects and relations, is not just, reasonable and right. I am, nevertheless, constrained by my convictions, deliberately to repeat, that it seems to me that the real source of the public feeling against the action of the school authorities, is not so much a regard for the substance of religious education as solicitude for the name of Protestant supremacy. The sting consists in having to haul down the Protestant flag without thinking whether they had any business to be flaunting it in their neighbors' faces. * * *

Why, if your honors please, if I remember rightly, in the opening of his speech at Pike's Opera Hall, the commencement of this suit and of this controversy, he laid the foundation of his argument in the dedication of the continent by its first discoverer to Christianity, and he might have added to the Pope of Rome. He and his colleagues enlarged upon the fact that all the early governments of the colonies were based upon the recognition of the binding obligation of the same law; that the Declaration of Independence was also a recognition of the same fact, and that the Federal Constitution was itself based implicitly and necessarily upon the existence of the same state of things. Now, if this be so, if Christianity is a system of law binding on the citizens, as being a command from the supreme civil power that is as extensive as our national institutions, lying at the base of them all, federal and national, then of course the conclusion follows that the people of Ohio, as such, have no right to repeal or abrogate it; and that, consequently, as being a part of that universal frame of government in which they form but a part, they can have nothing in their constitution which denies it or is inconsistent with it. But it was not my purpose to insist upon any thing as deducible from that view. It is sufficient for the purposes of my argument to allow the gentlemen to stand upon the narrower ground, if they prefer it, that Christianity, as a system of law, is recognized and made valid and binding in the state of Ohio by the supreme civil power that exercises jurisdiction here.

But this will not do. We may call the eccentricities of conscience, vagaries, if we please; but in matters of religious concern

we have no right to disregard or despise them, no matter how trivial and absurd we may conceive them to be. In the days of the early Christian martyrs, the Roman lictors and soldiers despised and ridiculed the fanaticism that refused the trifling conformity of a pinch of incense upon the altar, erected to the Cæsar that arrogated to himself the title and honor of "divine," or of a heathen statue. History is filled with the record of bloody sacrifices which holy men who feared God rather than men, have not withheld, on account of what seemed to cruel persecutors but trifling observances and concessions. And especially the history of the Protestant divisions in religion, is the record of the fearlessness with which men, in the exercise of the rights of conscience, have not hesitated to fill the world with their schisms, upon what to others appear to be the merest and most insignificant forms; so that they have seemed to worship iconoclasm rather than what seemed to them to be forbidden images. A posture, a gesture, the sign of a cross, the bowing of the head, a genuflexion, the sprinkling of a few drops of water, a few words said over a wafer, a picture, a lighted candle, a vestment, whether words shall be said or sung, whether choristers shall be dressed in surplices, whether there shall be a black gown, or a white gown, or no gown at all, whether prayer shall be read or said, whether a psalm shall be chanted, or if read, whether by minister alone or minister and people responsively, or whether a hymn not composed by inspiration may be sung, whether the music shall be led by a precentor or accompanied by an instrument, and if an instrument whether it shall be viol or organ, whether a sermon may be read, or shall be committed to memory and spoken without manuscript, or preached without verbal preparation; these and perhaps a hundred other like things, of no greater import, not to speak of the numberless variances of opinion upon matters confessedly not essential to religious conduct and character, have nevertheless been regarded by religious men as sufficient in conscience to justify a breach of the unity of the church; and it is notorious, that the heat of contention between sects, divided upon points of faith or order, has been in proportion to the narrowness of the line that has divided them.

Conscience, if your honors please, is a tender thing, and tenderly to be regarded; and in the same proportion in which a man treasures his own moral integrity, sets up the light of conscience within him as the glory of God shining in him to discover to him the truth, so ought he to regard the conscience of every other man, and apply the cardinal maxim of Christian life and practice,

"Whatsoever ye would that men should do unto you, do ye even so unto them."

They ask, "Have Protestants no rights? Can not the majority of the community insist upon their consciences? Must the rights of minorities alone be consulted? Are we to be ruled by Catholics, or Jews, or Infidels?"

The answer is obvious and easy. Protestants have no rights, as such, which do not at the same time and to the same extent, belong to Catholics as such, to Jews and Infidels too. Protestants have a civil right to enjoy their own belief, to worship in their own way, to read the Bible and to teach it as part of their religion, but they have no right in this respect to any preference from the state, or any of its institutions; they have no right to insist upon Protestant practices at public expense, or in public buildings, or to turn public schools into seminaries for the dissemination of Protestant ideas. They can claim nothing on the score of conscience, which they can not concede equally to all others. It is not a question of majorities or minorities; for if the conscience of the majority is to be the standard, then there is no such thing as right of conscience at all. It is against the predominance and power of majorities, that the rights of conscience are protected, and have need to be.

There is one practical test to which this matter can be brought, that, if it would only be honestly applied by every one within the sound of my voice, I think would settle this controversy without another word, and that is this: Suppose this was a Catholic community and the Protestants were in the minority, and suppose that the Catholics had established a system of common schools in which they had declared that religion, morality and knowledge being essential to good government, therefore the general assembly should pass laws for the purpose of protecting every religious denomination in the enjoyment of its own mode of public worship, and also for the encouragement of schools and the means of education; and that, therefore, they had created a large fund, taken partly out of my pocket and partly out of yours, and of the remainder of the citizens, for the establishment of a magnificent system of schools, and had said: "But inasmuch as our constitution requires that religion shall be the handmaid of government, therefore we must incorporate religious instruction into those schools, and we know no religion except that which Mother Church teaches, and we know no hands to teach it except those whom God has appointed, and whom His representative and vicegerent upon earth has anointed with the holy oil of His approbation for that

purpose. Now, therefore, we shall declare by a constitutional rule, which shall be so firmly fixed in the social institutions of the country that nothing can change it, that every morning the exercises of the day shall be commenced by the solemn worship in the sacrifice of the mass."

It is said there are hundreds and thousands of children in this goodly, this Christian city, that have no chance or opportunity for being educated in what my friends on the other side call "the elementary truths of Christianity," not even in a knowledge of that "broad Christianity," unless it can be given to them by a perusal every morning, by the teacher, of a few verses out of the Bible in the common schools. I say, if it be so, it is a lamentable confession of great lack and neglect of duty, not on the part of the state, but on the part of the church, meaning by that the invisible body of true believers who are, as they believe, to create the Kingdom of Heaven upon earth.

It is said they are in the by-ways, lanes and alleys. And can they not be reached there? Can not the church send out its ministers? or are they too busy, day after day, in their studies, preparing to dole out dogmatic theology Sunday after Sunday, to the tired ears of their wearied congregations? Can not they send out their Sunday-school teachers? Can not they send out their missionaries? Why, the command of the Savior was to go out into the streets and lanes of the city, and into the highways and hedges, and bring all in, bring them in to the feast which he had prepared — this feast of fat things, of goodly things. Must we say that the church has grown idle and lazy, and can only hobble on its crutches, and therefore that our school directors must set themselves up as teachers of religious truth? No! let the church cease to depend upon any adventitious or external aids. Let her rely solely upon the omnipotent strength of the spirit of the Lord that is in it. Let it say to the state, "hands off; it is our business, it is our duty, it is our privilege to educate the children in religion and the true knowledge of godliness." Don't let them starve on the husks of a broad Christianity. Let us give them that which is definite, and distinct, and pointed—the everlasting and saving truths of God's immortal Gospel.

APOSTROPHE TO THE BIBLE.

But if your honors please, let me say, for I conceive it to be a privilege to say it, that I believe that this book, which I hold in my hands, is a sacred book in the highest sense of the term. I believe that it is the word of the living God, as essential to our spiritual

nourishment and life as the bread we eat, and the water that we drink to quench our thirst is, for our bodies. It records the history of the most marvelous appearance that ever occurred in human history—the advent in Judea of the man Christ Jesus, the promised Messiah of old, whom Moses wrote about, and of whom Moses was a feeble type; whom Joshua predicted when he led the hosts to take possession of the happy land and prefigured; whom all the prophets foretold, and the Psalmist sung, and the people sighed for, throughout all the weary ages of their captivity and bondage; who appeared in the light and brightness of the heathen civilization of the Augustan age; who spake as never man spake; who healed the diseases of the people; who opened their eyes; who caused the dumb to speak, the blind to see, the deaf to hear, and preached the Gospel to the poor; who was persecuted because he was the living representative of divine and absolute truth, and who was lifted up upon the cross charged with blasphemy untruly, but slain upon the baser charge of treason to the Roman Cæsar, while in the very act of declaring that his "kingdom was not of this world;" lifted up, to be sure, by the hands of men, of ignorant men, for whom and for whose forgiveness he prayed, "because they knew not what they did;" lifted up by their hands, but in pursuance of a covenant that he had made in eternity with His Father that it should thus come to pass, because without the shedding of blood there was to be no remission of sin; lifted up in order that he might draw all men unto himself, that whosoever looked upon him might be healed of the poison of original sin and live. "Behold the Lamb of God which taketh away the sins of the world!" That, if your honors please, is my *credo*. If I am asked how I prove it, I enter into no disputation or doubtful argument. I simply say that his divinity shone into my heart, and proved itself by its self-evidence. I have not three witnesses only, if your honors please, above. I have five—five witnesses in heaven to-day, that are calling to me to come to them. I would not give up, I would not abate a jot or a tittle of my belief in that book, and in the God that it reveals, and the salvation that it offers for all that this world can give. And yet, if your honors please, in the spirit of my Divine Master, I do not want to compel any man. If he can not believe—oh! it is his misfortune, not less than his fault, and not to be visited on him as a penalty by any human judgment. It is not to be the ground of exclusion from civil rights; it is not to bar him from any privilege. It is even, if your honors please, to protect him from the finger of scorn being pointed and slowly moved at him as if he were out of the pale of divine charity. Oh,

no; it was to the lost that the Saviour came, to seek them as well as to save them; and I know no other way, I know no better way, to recommend the truth of that book to those who can not receive it, but to live like him whose teaching is to be just, to be good, to be kind, to be charitable, to receive them all into the arms of my human sympathy, and say to them: "Sacred as I believe that truth to be, just so sacred is your right to judge it."

[After citing many authorities, he thus spoke of the church]:

Let her rise up in the full measure and majesty of her innate spiritual strength; let her gird her loins for the mighty task; let her address herself with all earnestness and heroic zeal to the great but self-rewarding labors of Christian love; let her prove herself by her works of self-denying charity, to be the true Church as Jesus proved himself to the disciples of John to be the true Messiah, when he told them, "Go and show John again those things which ye do hear and see; the blind receive their sight and the lame walk, the lepers are cleansed and the deaf hear, the dead are raised up and the poor have the gospel preached to them." Let her organize all her forces for a more determined and closer, hand-to-hand struggle with sin and evil, of every form, and the misery and wretchedness, of which they are the cause. Let her ministers and missionaries not only proclaim from their pulpits "the unsearchable riches of Christ," but descending among the hungry multitudes distribute to them the precious bread of life. Let them declare to the rich and the educated, their duties, their responsibilities and their privileges, and lead them in person to the places where their work is to be done, and stimulate them by their example to do it. Let them inspire by their enthusiasm, and fire with their zeal, the indifferent and the slothful. Let them, by setting forth the beauty of holiness and the purity of "the truth as it is in Jesus," which is able to make us wise unto salvation, send the healthful and invigorating influences of our holy religion through every social relation, and glorify the business and the pleasures of our daily and secular life, by consecrating them to the glory of our Father who is in heaven. Let them turn these streams of the pure water of life, welling up in the hearts of their followers, into the dark and pestilential receptacles, where ignorance, poverty, misery and sin are gathered, and breed disorder and death. Then the great and the good, the noble and the wise, in the unity of the Spirit and the bond of peace, forgetting those things which are behind and reaching forth unto those things which are before, pressing toward the mark for the prize of the high calling of God in Christ Jesus, in one grand array, will meet and wrestle against principalities, against powers,

against the rulers of the darkness of this world, against spiritual wickedness in high places, and shall wrestle not in vain, for they shall be strong in the Lord and in the power of His might; clad in the whole armor of God, their loins girt about with truth, and having on the breast-plate of righteousness; their feet shod with the preparation of the gospel of peace, and above all, taking the shield of faith wherewith they shall be able to quench all the fiery darts of the wicked, the helmet of salvation and the sword of the Spirit, which is the word of God, praying always with all prayer and supplication in the Spirit. Then shall be hastened the promised time of the coming of our King when there shall be a new heaven and a new earth, wherein dwelleth righteousness—the holy city, the New Jerusalem, coming down from God out of heaven, prepared as a bride adorned for her husband, the tabernacle of God with men, where He will dwell with them and they shall be His people, and God himself shall be with them and be their God.

But let them remember that to advance this glorious consummation the Church must throw away the sword of civil authority which some of her too eager and impetuous sons would put into her hands; that the Kingdom of her Lord is not of this world; that she must render unto Cæsar the things that are Cæsar's, and unto God the things that are God's; that she must not permit any unholy dalliance with the solicitations of worldly power or advantage, but keep herself unspotted from the world; that her dominion is over the minds and hearts of men, and her victory achieved with spiritual weapons alone, by appeals to their reason, to their conscience, to the highest and best in their ruined nature, to be restored by the power, not of human laws, but of the Spirit of God; and that in proportion as she becomes conscious of her origin and destiny, of the divine and immortal life she bears in her bosom, hid with Christ in God, and grows into the recognition of her mission and place in the work and history of the world and of eternity, she will dissolve all ties that bind her to secular influences and the natural sphere of human interests and actions, and establish herself firmly upon the seat of her spiritual throne, whence are complete and equal rights, and where every person can join any sect he pleases, or belong to none, or found a sect for himself.

I have not, may it please your honors, strength to continue. There is a world of things that crowd upon me to say, but I must forbear; but I cannot close and take my leave of this case without saying that I owe my profound and sincere acknowledgments to your honors for the patience with which I have been treated. I know that I have needed forbearance; I have not perhaps deserved

it, but your honors know the palliations of the case. I could not say less. What I have said, I know your honors will believe me, I have said in the fear of God, because I believed it was the truth and the right. If I have erred, if I am wrong, I can only look to Him for pardon who is willing to extend it to all who humbly seek it. But I tell your honors my heart is in this thing. I believe it to be a matter of the most vital, of the most momentous and profound importance. Whether I be right or wrong, it calls upon your honors, it summons you to a very high, a very difficult and a very important duty. I shall make no appeal to your honors. Your honors know what your duty is, and I know you will perform it.

[*Note.*—This address is not given for its author's opinion, but for the power of his logic. No opinion is here given on the merits of the discussion. But he won.]

THE STANDARD OIL COMPANY CASE.

Argument of Hon. Stanley Matthews.

This mammoth corporation, "more valuable than a gold mine or a railroad," that has coined its millions for the company, was organized in July, 1876, as a "Confederacy." It was to keep its business a profound secret, limited to 85,000 barrels per annum, and neither of the confederates to engage in a rival business for ten years.

The monopoly was broken by one of the partners, and an injunction applied for in Cleveland Common Pleas Court, to restrain the partner from doing business contrary to his agreement. The injunction was denied, and the order appealed from, at the hearing of which this argument was made by Mr. Mathews, whose special *forte* is in convincing a court of learned judges. His sentences are so long, and reasons so exhaustive, that few jurymen could comprehend them.

He is one of the few men whose court arguments are lively and command attention. His periods are all massive and Websterian, replete with choice selections, apt citations, and plain, sensible con

clusions. So confident is he in his positions that his own belief inspires his whole argument with force and earnestness. This address is condensed to a very brief one from 144 pages, and contains one of the longest and strongest periods ever delivered by Mr. Matthews.

After an elaborate legal statement Stanley Matthews said:

It was agreed, your honor, that it should be kept profoundly secret—secret not merely from the customers of the firm, not merely from the consumers of this article, not merely from the inquisitive eye of an over-curious public that had no business to inquire into the private matters that belonged to the firm, but from the bookkeepers of the firm of Scofield, Shurmer & Teagle, from the agents, employes and hands—aye, from the very wives of the parties themselves. And this was done practically. The intention was executed. It was adopted as a practical construction of the understanding of the parties in reference to this agreement that a fictitious and false account should be opened on the books of Scofield, Shurmer & Teagle to represent the transactions under this agreement, and that a box in the postoffice should be rented in another fictitious name, in which all communication between the Standard Oil Company and Scofield, Shurmer & Teagle should be deposited, no one having access to that box, or knowing from whom the communications came, except these parties personally themselves. The significance of that fact will appear hereafter when we come to consider what the law is in regard to it. As to the fact there is no doubt; and it demonstrates this: that the whole thing—the mode of keeping these accounts and of transmitting these communications, and of suppressing all possible knowledge of the existence of this arrangement—was not in the usual course of business. It is not the way in which business men carry on ordinary business enterprises, and it reflects light upon the character of the arrangement entered into between the parties and upon the intention and motive that actuated them in it, and shows what their purpose was; to wit, that this joint adventure, so called, was a mere form, a mere sham, a mere device. It was colorable. It was not intended as an ordinary joint adventure in which parties hazard agreed proportions of capital, time and skill in the result of a particular business enterprise, but refer to outside influences and to effects other than those involved in the success.

How does it happen that the Standard Oil Company is in the position, which it assumes in this stipulation, by which it can say to the defendants, "You allow us, in our name, not in your own,

to send to market the product of your oil refinery, by such routes as we may select, and we will be able to give you lower rates of freight, by means of rebates, than you can get by open stipulations in the market by going from one trunk line to another?" Had it the power to procure freights on better and more advantageous terms than the rest of the public engaged in the same business? If it had not, of what value is that stipulation, and how does it operate as a consideration for the restraints imposed upon these defendants in this business? And if they had such power, how did they get it? and what legal right have they to exercise it? By what authority of law has any railroad company a right to combine with the Standard Oil Company and say to it that for any cause, or any consideration, the product of its refinery, or the product of any refinery shipped in its name, shall be taken from Cleveland, the point of production, to New York, or elsewhere, the point of marketing, at a more favorable rate than the humblest and the smallest manufacturer in the same business can get? Any such arrangement as that would be only a part of the same illegal and oppressive combination of which this contract is a specimen, and shows, not, certainly, what the fact may be, but beyond all question shows what the tendency and the ultimate result must be, and that is that if this or any other corporation is allowed to exalt itself in this way and by these means above competition, it is also exalted above the law. In other words, if you will put yourself into our power by agreeing not to come into competition beyond the limit which you agreed of 85,000 barrels per annum, in return for that we will enable you to have advantages in the transportation of your product beyond what can be had in fair and open market, by secret arrangements. These are to be rebates—excesses to be paid over and above the actual rate, and between that and the nominal rate held out as the market price for transportation to the ordinary customers of the corporation.

Now, what is it these parties are complaining of? What is the specific injury which they have suffered? What is the damage which they have incurred? What is the loss that must be made good to them? The facts that I have stated demonstrate that if they have suffered any injury, that if they have received any damage, that if they have actually fallen under any loss, it is some injury and damage and loss outside of this adventure. The adventure has not suffered any loss, and the amount of interest invested in the adventure has not received any detriment, that adventure has been an immensely profitable one; it has been better than a gold mine. It has been equal to a mint; for, without any personal

supervision, without any loss of time, without any expenditure other than the bare investment of the money, insignificant in its amount as compared with the results, they have been receiving dividends that are to be counted, not by percentages, but by multiplication of the original capital over and over again. How are they hurt? Why do they complain? Why, the Scofields say that there is a dreadful risk in this matter, and they may be overwhelmed with personal responsibilities incurred by virtue of the action of their partners. There is not an allegation that a single debt has been contracted. There is not an allegation that there is a single outstanding unpaid promissory note. There is nothing whatever to show that this has not been the ordinary and legitimate result of simply cash operation day after day by the devotion of the time, the attention, the skill, the economy and the prudence of the men whom they are arraigning here for subjecting them to the dangers and hazards of this enterprise. They could afford to lose something for a year or two, and then, on the whole, it would be an immensely profitable undertaking. Is not, then, the conclusion inevitable that the clamor of danger to the interests that are invested in this enterprise is a false clamor, that the outcry is for some other reason, and that the real injury has been that the Standard Oil Company has only made half of the excess of this amount, when, by its right, it ought to have made the whole; and that it had agreed that these men should make for them one-half of all that their industry, economy and enterprise could pile up, to the extent of the profits on 85,000 barrels per annum; but that when it came to anything more than that they were to have every dollar of it themselves? Then what is the object of this contract, if it is not to limit the production of these gentlemen to this amount, in order that the Standard Oil Company shall have the entire area of production left unoccupied by others for its own benefit? And what is that but an agreement to stifle competition, to suppress opposition, to create, to the extent to which the agreement goes, a monopoly in the hands of the Standard Oil Co.? I do not know whether the Scofields have any interest in the Standard Oil Co., as such, or not; but their attitude and appearance in this cause is ground of suspicion that they are making use of their real interest in this enterprise with their partners in this firm as a tender to increase some interest which they have, in which their partners are not entitled to share. Certainly the Standard Oil Co. is not seeking the interests of this adventure. They are seeking the incidental and collateral benefits of this agreement to an interest of their own, belonging exclusively to themselves, and which

is outside of this adventure, and consists of that independent and separate interest which they previously had in the conduct of their business, which the object of this contract on its face is to reconcile the adverse and hostile interests of Scofield, Shurmer & Teagle, not by limiting themselves, but by limiting Scofield, Schurmer & Teagle to a production of 85,000 barrels of refined oil per annum. That is shown as a matter of fact, as the inducement for entering into this covenant and agreement, in addition to the recitals contained in it, by the testimony that was read in the affidavit of Scofield as to what conversation took place between the parties at the time when this amount of 85,000 barrels per annum was adjusted as the relative proportion of the capacity of this refinery, and limited to that. But they took very good care not to limit themselves to a corresponding relative proportion of production in their own refineries, and then agreed that any quantity over and above the aggregate amount should be divided between the parties in the same ratio. Such an agreement would have been in consonance with the spirit of such an understanding, and would have had some of the elements of equivalency and fairness in it. But for ten full years—a fixed period—provided it suits the Standard Oil Co. not to suspend and resume again in that time, continuously, without regard to any changes in the situation, without regard to any increase in the price of the article in the market, without regard to any changes in the method of production, without regard to any improvements in machinery, without regard to any of the possible and probable changes that may take place in this wonderfully changing age and country during a period of ten years—the ten years from 1876 to 1886—equal to a hundred years of any other century—all that time, in the midst of all these fluctuations and changes, these men are to be ground down with their noses to the grindstone, incapable of taking any advantage of any favorable change to their own interests or the interests of the public, the fixed terms of this contract limiting them to a production of 85,000 barrels per year, while the Standard Oil Co. becomes by that—and if it can make that, it can make a thousand other contracts with a thousand other people—becomes by that the "monarch of all it surveys." Ten years! Why, it has been but a little over thirty years since there was no railroad in the city of Chicago. On the fourth day of July, 1847, in that city I heard Edward Bates, then a distinguished lawyer in the city of St. Louis, declare in a public speech that he had never then seen a railroad, and he could not see one in the town where he was making his speech. In St. Louis and Chicago to-day, more railroad business

centres, perhaps, than in any other two points on the surface of the earth! And we have not half done. We have only half begun. What changes are to take place during the progress of the ten years from 1876 to 1886, no man knows. But Scofield, Shurmer & Teagle are not to have the benefit of them. They are required to go to the old treadmill in the old way, and when they have made a profit on 85,000 barrels per annum, of which all in excess of $35,000 goes to the Standard Oil Company up to $70,000, and then one-half of the rest. All the rest, with all new improvements, new developments and changes, is to be swept into the coffers of the Standard Oil Company. I suppose for the benefit of the widows and orphans that own its stock.

Now, is it the policy of this country, is it the policy of this state to allow a corporation to enlarge its powers, to increase its facilities, to draw to itself all the business of the kind which it was authorized to carry on, no matter whether conducted by itself, under its own rules and by-laws, or by others, so that it shall sit, as that council that was alluded to by the gentlemen on the other side, "high on a throne of royal state," and dictate to all those who have come in subjection to it the capital they shall employ, the policy they shall pursue, the purchases they shall make, the prices at which they shall sell, the rates of transportation which they shall employ, the methods by which they shall supply the market, the sales, the purchases, the negotiations, the contracts? Why, we might have—I do not say that we have; we are arguing tendencies and not results—we might have a corporation growing up, under the influence of such a simple principle as that, until you might hear some day that it had divided nine millions of dollars among its corporators in one year as profits on its business; that, in the short course of ten years, men who had started on the same level, as to means, with the ordinary citizen, shall have grown into such proportions of wealth, as almost to rival the descriptions and the glitter of the Arabian Nights; when no expense is too vast for the gratification of a taste, no matter how trivial, and when a man, simply for the purpose of enlarging the boundaries of the play ground of his children, may destroy a habitation worth fifty thousand dollars. I am pointing out to your honor what is the inevitable, the irresistible tendency of allowing corporate bodies to add, at their own volition, to the aggregate of those powers within which they are restrained by the letter of the law. If your honor please, is this apprehension of danger an unreal one? Is it one that is outside of the limits of a judicial argument? The fear of the growth of corporate monopolies is as old as Magna Charta.

Now I come to the chief question in the case, and that is, that this contract is illegal and void, because it is in restraint of trade. It certainly does not need any definition of what such a contract is to show that this is a contract in restraint of trade. A contract which restrains trade is certainly a contract in restraint of trade; and all that it is necessary to do is to look at it and to read it, to see what its stipulations are, in order to determine whether or not it is within that description. It does not follow that it is unlawful because in restraint of trade. That remains to be considered. But now the question is, is it in restraint of trade? Does it restrain these defendants, Scofield, Shurmer & Teagle, in the conduct of their business? There certainly ought to be no controversy about that. I pointed out this morning, in reading the contract by sections, the various particulars in which it does actually have the effect, if it is put in force, to restrain them in the conduct of their business in accordance with their own discretion. It requires them to abstain from establishing any other business. In this the public has a deep interest, both as to the price of raw products and manufactured articles to buy.

Kerr on Injunctions has well said: "Covenants in restraint of trade, though only partial, if nothing shows them to be reasonable, are presumed to be void upon grounds of public policy. But covenants in partial restraint of trade, where there is a fair and reasonable ground for the restriction, are good and valid. They are upheld, not because they are advantageous to the individual with whom the contract is made, but because it is for the benefit of the *public at large that they be enforced.*"

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Now, if your honor please, let us pause here a moment, for this establishes two or three particulars. In the first place, it establishes that every contract, even in partial restraint of trade, no matter how small the restraint may be, how limited in extent or in degree, or in kind, or as to person, or as to place, it is presumed to be bad. Standing by itself, without explanation, on its own face the law declares it to be bad. It must be shown outside of the restraint to be good, by circumstances established to the satisfaction of the court, upon which the court, expressing the judgment of the law, can declare it to be a useful and proper contract. In other words, all the presumptions are against this; and you cannot even presume against these presumptions. You cannot presume that there are benefits to be attained by the contract which overbear the mischief from a restraint which the law implies. You may argue that there are reasons; you may imagine that there are

circumstances; you may invent conditions; you may suppose this, that and the other; but the law is inexorable. It says: "The man is restrained, and that is enough;" and until, as matter of fact, proof declares that that restraint is under such circumstances as to make it a useful and proper contract, the presumption of the law against its validity must have full sway and complete operation. Then the presumptions are all against the contract.

In the next place, it is a question of law whether that presumption is overcome by proof of other facts. It is not a question for the jury; it is a question on which the court, out of the testimony, extracts the materials of its own judgment. Of course, the judge sitting in the case has the right to bring to bear upon it whatever other knowledge he may have, which is the common property of the public. But he starts out with what the law has declared, by virtue of its enactments from time immemorial, that restraint in itself and of itself vitiates the contract until it clearly appears otherwise, that this restraint is promotive of the public good.

I refer your honors to a recent grain case of our own state, where the court says:

"Prior to and up to the time of the execution of the agreement set out in the bill, the four parties were engaged in the grain business in the town of Rochelle, each on his own account, and in competition with the others. But after the agreement was executed all competition ceased. All the warehouses in the city and every lot suitable to erect a warehouse upon was controlled by the combination. Some were purchased and others leased, so that the combination formed effectually excluded all opposition in the purchase, sale, storage and shipment of grain in that market. Secret meetings were held in the night time by the parties to the contract, at which the price to be paid for grain was agreed upon, rates for storage and shipment fixed, in order that the public should be kept in ignorance of the plans and operations of this illegal combination. To the public the four houses were held out as competing firms in business. Secretly they had conspired together and were working in a common cause in the sole interest of each other. The language used in the contract itself leaves no room for doubt as to the purpose for which the agreement was entered into, as a few extracts will show: 'Each separate firm shall conduct their own business as heretofore as though there was no partnership in appearance, keep their own accounts, pay their own expenses, ship their own grain, and furnish their own funds to do business with,' etc., reciting parts of the articles which I have

read. While the agreement, upon its face, would seem to indicate that the parties had formed a co-partnership for the purpose of trading in grain; yet, from the terms of the contract and the other proof in the record, it is apparent that the true object was to form a secret combination which would stifle all competition, and enable the parties, by secret and fraudulent means, to control the price of grain, cost of storage and expense of shipment. In other words, the four firms, by a shrewd, deep-laid, secret combination, attempted to control and monopolize the entire grain trade of the town and surrounding country. That the effect of this contract was to restrain the trade and commerce of the country is a proposition that cannot be successfully denied."

Now it did not tend to restrain the amount of the trade of any one of the individuals; it only tended to restrain the discretion of each in the management of his own business.

After quoting from some authorities on the doctrine of the law in restraint of trade, the court goes on to say:

"While these parties were in business in competition with each other, they had the undoubted right to establish their own rates for grain stored and commission for shipment and sale. They could pay as high or low a price for grain as they saw proper and as they could make contracts with the producer. So long as competition was free, the interest of the public was safe. The loss of trade, in connection, with the rigor of competition, was all the guaranty the public required; but the secret combination created by the contract destroyed all competition and created a monopoly against which the public interest had no protection."

They would not allow an account between the parties to settle as to what had been done under that; so sustaining both the Pennsylvania case and the New York case as to the effect of the illegality of a contract upon past transactions.

The case deserves special consideration in its application to the one at bar, for the reason that it is entirely similar to it in respect to one of the most marked and significant features, and that is as to the manner in which the parties operated under the contract, under the joint injunction of secrecy. Here, as there, the Standard Oil Company and the firm of Scofield, Shurmer & Teagle had been, prior to the twentieth day of July, 1876, engaged for itself in this business of refining oil, independently, separately, adversely, in rivalry, in competition with each other, each one seeking to advance its own interests in its own way, according to its own judgment, and

applying to its own business all the resources of its own capital, intelligence and energy.

Now, they make this contract, and the first stipulation in it is that it shall be kept secret from the public; that each of the two parties shall continue to march and fight under its own flag as before; that they shall not appear to have ceased competition each with the other; but, on the other hand, that they shall appear to the public to be actively engaged in the ordinary competition which always rules between persons engage in the same business. More than that, special and particular methods were adopted for preserving their secret. A false account was opened on the books of these defendants in order to conceal the nature and origin of the transaction from their own bookkeeper and all their agents and employes; and in the name of that account, false and fictitious checks were drawn, bills were made out and balances struck. And more, that in order that the correspondence of the parties should not be known even to those who might casually open letters addressed to the firm, or might be authorized to do it, a particular postoffice box was hired in a false and fictitious name, and to that name were addressed all communications from the Standard Oil Company on the subject of the operations, deposited in that post-office box and taken out only by those who were in the secret, and who were bound to keep it. Why was this, if his was a legitimate contract, if it was up to the ordinary course of business, if it was done for the promotion of a useful and honest purpose consistent with the public interest? Why was all this veil of secrecy so closely drawn on every transaction involved in the operation of the parties? I can understand why any business house should desire that its transactions and operations should not be made public property. I can understand that the communications between partners and between the heads of a business house and their employes, their clerks, their agents, their bookkeepers are confidential—because there are matters of privacy that are attendant upon the transaction of any business which those conducting the business have a right to conceal. But this was to conceal a transaction from people who, if it had been done in the ordinary course of business, would necessarily have known of it. This was out of the ordinary course of business. Here was something done, not for the legitimate protection of the interests of the parties, considering those interests in the light of a part of the public interests, but it was a device for the purpose of deceiving the public, of making the people, who were the customers of these parties, believe that they were dealing with men who were themselves dealing with

each other at arm's length; who were opposed in interest by the principle and operation of the law of compensation; who were rivals in business; who were hostile in trade, instead of being combined and confederated together as they were under the bonds of this contract, kept secret in this way, and wherein it was provided that the amount of production was to be limited in order that one party might be able to dictate a profitable rate in the market, and so control the price of an article of "prime necessity." Therefore this contract comes under the condemnation of the Supreme Court of the state of Illinois, in the case which I have just read, on the ground of its being a secret combination to do, in that case, what they might lawfully have done; for if all the grain dealers in the town of Rochelle had met every morning and agreed that for that day they would sell their grain at such and such prices, they might have gone on and sold and the transaction would have been legitimate; but they could not make a bargain to bind themselves so that no one dealer could withdraw whenever, in his judgment, his own interest or that of the public dictated that he should. Merchants do congregate day by day at places of public exchange, and there they do fix the market price for the day of their articles; but any man has the right to sell above the market price, if he can find any one to buy, and he has the right to sell below the market price if he chooses to do so; and, although he may agree with all his brethren in the business not to sell either above or below, it is a bargain from which he has a right to recede and his consent to which he may retract at any time, induced either by considerations of his private interests, or by any other motive that he may choose to permit to govern him.

* * * * * * * *

It may be said this is not a partnership. It says on its face that they are not to be partners, that it is a joint agreement. If your honor please, calling a thing by a name does not make it a thing other than it is. Whether or not it is a partnership depends upon the actual relation of the parties as established by the contract, and not upon what they choose to name it. But if it is not a partnership, then no argument can be drawn from the fact of a partnership against the contract as being one in restraint of trade. If it is a partnership, then it is equally open to the same objection, for the reason that the restraint is not imposed upon the party for the benefit of the mutual and joint interests which are consecrated by the agreement itself created. * * * *

And now, if your honor please, it only remains for me to sum up the substance of the points on which I rely. I say, that on the

supposition that this agreement is a valid agreement at all, an injunction will not be granted to enforce the specific performance or to prevent a breach of the covenant in restraint of trade, which is here alleged as the ground of the action; because, in the first place, the contract itself is such a one as a court of equity will not countenance and favor, because it is hard, oppressive, unequal, unjust and unfair, as between the parties to it; because, in the second place, it requires the supervision of the court to be exercised over the personal conduct of the parties; for the court will not execute it in part and leave it at large in part; they will not, for the benefit of one party, enforce specifically the execution of one part of the agreement when they see from the terms and tenor of the rest of the agreement that it is incapable of being enforced as against them, requiring the court constantly to intervene for the purpose of controlling and regulating the personal conduct of the parties who have upon them the execution of the agreement; because, in the third place, the damages which may be recovered at law, if the contract be valid, are a complete, full and perfect satisfaction for the injury complained of, which can be arrived at by a mere arithmetical computation on the whole profit of the excess which it is forbidden by the contract to produce; because, in the next place, there is another adequate remedy, and one which the parties have supplied, and that is a termination of the contract by the voluntary act of the parties themselves.

In other words, they are asking your honor to enter a judgment against us in advance of the trial of the case. Now, where an injunction is sought in a preliminary stage of litigation for the purpose of preserving the *status in quo,* of protecting property which might be wasted, of preventing the commission of some act of irreparable damage and injury, I can understand why it is made—in order to preserve in existence the subject-matter out of which the rights ultimately to be adjudged grow. But where the object of the application is to obtain only that, and that altogether, which constitutes the very essence and scope of the entire judgment finally to be rendered, it seems to me that the court ought to withhold its discretion in the granting of such an injunction, except in a case where it can see in advance that it must ultimately decide the case on its merits in the same way and on the same side. If your honor entertains a reasonable legal doubt as to what will be the ultimate issue on the trial of the case upon its merits, then I say it would be a harsh, a very hard thing to stop the business of these defendants in the interim, and to require them to suspend their operations and put an end to their manufacturing in the mean-

time, until it might finally be decided whether or not they would have the right to go on. They are the parties, then, that might complain of the irremediable injury which no recovery on an injunction bond would adequately compensate.

He prevailed.

THE PAGE IMPEACHMENT CASE.

In the Senate of Minnesota, 1878.

The very elaborate and interesting argument of facts, and able and ingenious exposition of law, in this class of cases, has seldom been handled in a more logical, convincing and entertaining manner, than was this case by ex-Governer Davis, of St. Paul, Minn.

The impeachment trial of Judge Sherman Page of the tenth judicial district, occurred just after the riots of Pittsburgh and other cities, when the public interest in such facts was at a high pitch. Gov. Davis has embodied an exhaustive and masterly review of the whole range of precedents in a novel and eloquent appeal to the common sense of the Senate, as well as an able defense of judicial dignity. The speech in full covers 113 pages, but published separately for such as require more than is here reported in brief.

Full extracts of each department are given, to enable the reader to follow the facts and digest them as they appear through the argument. It will be observed that the Judge deals in all varieties of illustrative stories, epigrams, and happy periods, that kept the senate often in laughter and always in excellent humor. As a legal argument it is unique, for the resting places are set, like mile-posts, all along the road of his reasoning.

SPEECH OF EX-GOVERNOR DAVIS FOR RESPONDENT.

GENTLEMEN OF THE SENATE:

The articles of impeachment exhibited by the House of Repre- of the State of Minnesota against the respondent, have been fully heard upon the proofs. All incidental questions have been set forever at rest, and have passed into precedents which will survive every person who witnesses this solemn proceeding. The clamor-

ous voices of comment are hushed, the myrmidons of hatred are now awed into expectant silence, the voice of affection has died away into silent and secret prayers to the God of justice, at this moment, when prosecutors and accused, friends and foes, stand in the presence of the law, whose embodiment you are, to hear her final words. This is the moment when counsel assume the exercise of sacred functions. The strategy of this contest has done its work, and he who yesterday was rightfully contending with every weapon which he could draw from the arsenal of offense or defense, is now consecrated to the duty of guiding blindfold justice along the sacred way. I pause before the task; would that it were in stronger hands than mine!

The power of the state, when concentrated against an individual, is of almost resistless efficacy. The condemnatory forces of society converge upon him in every open, in every occult form. This is true, even, in prosecutions for minor offenses, where the person is accused and tried by a social fragment of that great aggregation which we call the state. Even in such cases modern civilization has inherited some of the reproaches of darker times. The citizen who falls into the clutches of an indictment finds it hard to restore himself to the place from which it drags him. Consummate legal ability arrays itself against him. The executive officers of the law are his antagonists. The limitless resources of the public treasury subsidize his prosecutors. The active hostility or the cold aversion of his fellow citizens breaks down his courage. The law which confronts him as his opponent, out of its omnipotence listens languidly before it strikes a few cold, defensive maxims, often of as little efficacy as a Tartar's windmill prayer. But aided by them he is not wholly defenseless. Revered principles which are without beginning of days in the law speak with peremptory voice in the assertion of certain constitutional rights which are his, and which no court can take away. They ordain that he shall be tried under salutary forms; that he shall be informed of the nature and cause of what he is accused; that he shall be presumed innocent until the proof that he is guilty seals up every avenue of presumption that he is innocent. Such principles as these walk with him through the fiery furnace of his trial like inseparable angels of deliverance.

But in proceedings like this we have been most feelingly admonished that many of these safeguards, inadequate as they often are, are not for this respondent. Counsel have invoked into this trial the clamor of the newspapers. Counsel have appealed to the result of elections in a county whose turbulence now finds its last

disreputable expression on the floor of this Senate. We have been informed that this is a political issue. This court has put us to the ordeal of accusations which do not accuse, made by accusers who have no rightful power of accusation. The respondent has been compelled to defend himself against charges of which the House has absolved him, and against other charges which that body never saw. With some acts he has been accused by the House; with others he has been charged by the accusation of those who have no more power to do what they have done than they have to break the apocalyptic seals.

He has been compelled to defend at once himself and the constitution itself which has been assailed in his person, and to be the victim of a paradox which will be a puzzle to after-times. The men of years to come will ask when it was that constitutional safeguards so vital and so plain were overthrown; antiquarians will quarrel over the issue whether and when the House of Representatives as an impeaching body ceased to exist, and when its functions were merged in a select body of usurpers turned managers.

In ordinary cases a person accused of crime finds the legal elements of his defense in the statutes and the text-books in which it is defined, and it is the duty of the public prosecutor to bring him clearly and entirely within the limits of those definitions. But we are told that the respondent is to be tried for crimes which are nowhere defined, which no statute has declared, upon which no text-writer has commented. He is accused of breaches of taste and decorum; he is on trial for acts which society may visit with social censure, yet over which no court from the highest to the lowest, excepting this, has ever yet coveted or had jurisdiction.

Standing here for a judge thus assailed, defending the constitution thus attacked, striving to replace precedents thus rudely pushed from their pedestals by the iconoclastic rage of the real prosecutors of this judge, I do not regard myself as speaking on this day for my client alone. Momentous and far-reaching as the consequences of this prosecution have been and may be to him, the effect of this proceeding to my mind, goes far beyond him and embraces persons other than he. I speak to-day for the judicial office; I speak to-day for the integrity and independence of the judicial department of this government. It will be my endeavor on this great occasion to ward off from that department the profaning hands which have been so rudely laid upon it.

I have been bred and brought up to regard that department as sacred. The philosophy of our institutions has placed it in theory above the influence of popular faction, clamor and distrust. Con-

sider for a moment, Senators, the position in which a person placed in the office of a judge finds himself. No matter how active his temperament may be, no matter how decisive his executive ability, no matter how clear his convictions as to what ought or ought not to be in the community in which he lives, yet by public sentiment he is sequestered and set aside from interference with very many of the concerns of daily civic life. He becomes a legal monk as to secular affairs. If he is assaulted in person or character, it is generally deemed unseemly for him to resent; if he complains he is liable to the imputation of mingling in concerns from which his office should absolve him. If he is assailed upon the very seat of judgment by acts which derogate from the majesty of the law and the dignity thereof which he represents, this proceeding demonstrates that any effort which he may make to protect that which society holds most sacred, is to be deemed a criminal act and a cause of impeachment.

How naturally we appeal to that embodied conscience of states! When all else seems to be going to wreck and chaos, to what do men turn? To the judiciary. There is that, men say, which administers the law of abstract right; there is that, which, if anything can, will save us. Only a short time ago, when this nation hung trembling upon the verge of revolution and dissolution, when the will of the people as expressed at the polls in a presidential election was doubtful in its results; when accusations of fraud were exchanged from all sides; when the premonitory roar of enraged parties was threatening anarchy; when Congress seemed powerless, and the term of a President was about to expire; when all was uncertainty; when business languished, and every patriotic heart almost ceased to beat in the presence of a great wrong threatening a great danger, the American people, by an instinctive effort, not made within the limits of any strict construction of our constitution, organized a tribunal to settle that great controversy, and in a moment the proud waves of revolution were stayed, and the light of peace poured like a sun-burst over the darkened land. * * *

I desire to be further heard for a moment upon the correct construction of this phrase, "corrupt conduct in office." Of course I do not intend to argue here, I could not do it with any assurance, that the words "corrupt conduct in office" as used in the constitution do not mean every kind of corruption. That is not the meaning. A man may be corrupt in his office in many senses outside pecuniary corruption. It means corrupt intention in the execution of official duties. It means not only doing wrong, but it means doing wrong wickedly intending to do wrong. If a magistrate

does wrong thinking that he is doing right, he is protected in what he does by every law which the wit of man has ever enacted. If he does right, why of course the question of intent is wholly immaterial.

Judges may be punished by impeachment, but it must be for oppression and tyrannical partiality in the administration and under color of their office. (4 Blackstone, p. 141.)

The only occasion upon which the legislature is authorized to lay its hands upon the judiciary or on the executive, is when a member of either of those departments has committed a crime or misdemeanor, or has been corrupt in office. Was not that language used thus guardedly because the legislature had just adopted a provision that these departments shall be independent, and that no member of one shall infringe upon the functions of the other? But if this doctrine which you are asked solemnly to write in a book, and give down to recorded time, is true, then I say that the executive and the judiciary are at the mercy of the legislative department of this government. For if it is true that this is a great political inquisition, that its object is, and only is, to get rid of somebody who is not liked, or of some one who has been guilty of a breach of decorum, who confessedly has committed no crime, then I say no reins can be put to the unbridled audacity of any House of Representatives which may accuse, or any Senate which may convict. With the observance of the construction which I have advocated, the way is clear, and easy. The governor sits securely in his seat of office; the judges sit securely upon the bench of judgment; they are impregnable. * * *

This is the settled law:

"That judges and jurors do nothing carelessly and maliciously; that the decisions of courts of competent jurisdiction are well founded, and their judgments regular and legitimate; and that facts, without proof of which the verdict could not have been found, were proved at the trial."

Therefore it is not necessary for this respondent in regard to any of these charges by which it is alleged that he has made a mistake, and because he has made a mistake, that therefore it may be inferred that he is criminal, to enter into an elaborate defense in advance to show that he was right. These records which have been produced here of proceeding after proceeding, jurisdiction once being conceded or proved, stand enveloped in the presumption that the decision which was made upon them was right. And I might say here, for fear I shall forget it in a more proper connection, that the presumption is much strengthened in this case by the

fact that none of these records wherein he is alleged to have erred, were ever removed from his court to a court of final revision. Stimson has never taken up any of the records, there was no *certiorari* made on that order of the judge that Stimson should pay the fees into court. The Riley case was never appealed. There was no appeal, and hence the presumption becomes stronger.

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Our fathers well knew that the man who is accused of crime fights with society banded against him. It is a matter of common observation that that is so. Friends fall off, resources fail, the public print may be full of exaggerated statements against him, there exists that universal feeling of distrust which leads us all to avoid a man who is accused. Hence sprang up that merciful maxim that a person accused of any offense, be it high or low, is conclusively presumed to be innocent until he is proved guilty by such a weight of evidence as shuts the avenue of every presumption in his favor. He must be proved guilty beyond a reasonable doubt, beyond the last reasonable doubt which can arise in the mind of any rational person considering the case. Doubt, not only as to the act, doubt, not only as to the intent, but doubt as to the motive, doubt as to each element of the act. And if, after hearing all this testimony—even supposing and conceding, for the purposes of this branch of the discussion only, that there is anything here which calls for the invocation of that maxim—if there should be in the minds of any of you, after this discussion has closed, a doubt made apparent by a scintilla of reason, whether this respondent did not think he was acting within the duties of his office, whether he was not promoting the welfare and good order of society, whether he was not subserving the cause of common honesty, whether he was not preserving the dignity of his office and the law of the state as it stood there, embodied in and administered by him; if in your minds there exists a reasonable doubt as to any of these propositions, then I say he must go quit. Take your own cases, sitting here as judges, sitting as senators in your judicial capacity. How often, undoubtedly, during this trial, must have occurred to you grave questions weighing solemnly and heavily upon your consciences. Some of you may have some prejudices against this respondent, and are striving with them yet; some of you may have some prejudices in favor of this respondent, and are striving with them yet. But under the circumstances, gentlemen, can you not appeal to your own consciences, and say: "If I do the best I can with the lights which I have, and with the infirmities with which Almighty God has laden me, He will not hold

me responsible, nor can society?" He who is made a judge is not by that act translated into perfection. He goes to the bench with the same infirmities that he had in the walks of daily life. He struggles against them, as you here must struggle against them, and as you must in other capacities, if you do your duty. Your constituents knew what kind of men you were when they sent you here. His constituents knew what kind of a man he was when they elected him to be their judge. Nearly six years of his term have rolled around. That he has administered justice impartially between man and man, is not denied. His bitterest enemies come here and say that when he holds the scales of justice, their prejudiced eye cannot see that it turns a hair. What private suitor is here, man or woman, to claim that he ever has removed the landmarks of property or decided wrongfully in a case which involved private rights? All these cases wherewith he is accused, are where he has acted for the state of Minnesota in his public capacity against transgressors. His hand is as clean as an angel's of bribery. It is not pretended that he is not the justest man that sits upon any bench in this state. I say, therefore, that his counsel have a right to envelope him in the presumptions, first, that he has decided legally, and, secondly, to ask you to give to him to an extent never given before to any person accused, the benefit of that other presumption—that until he is clearly proven guilty, until he is clearly shown to be a criminal in the very worst and lowest sense, he is not amenable to the extreme penalty which the constitution of this state pronounces upon persons in his situation declared to be guilty.

It is a matter of common history that that was a time when the public mind was peculiarly feverish and susceptible upon the subject, whether the railroad corporations of this state and throughout the country had not acquired such a dominant position over public affairs and public men, as rendered their existence exceedingly dangerous to the body politic unless restraints were put upon them. At that time no more dangerous charge could have been made against a public man—no more heinous charge could have been made against any judge, than, at that moment, when not only this state, but the entire community of the Union was lying in a sense of apprehended danger from the encroachment of bodies politic upon the rights of the people, to accuse him of corrupt alliances with, or corrupt decisions made in favor of a railroad corporation. Accordingly, shortly after Judge Page took his seat upon the bench, we find that this man Mollison, apparently without any provocation, appears in print, in a public journal, printed in the city of Austin, wherein were set out the nauseous details of that libel,

accusing this respondent of "plowing with the railroad heifers," with corruptly deciding in favor of the railroad, a certain question in regard to taxes, by which, as the libel said, $50,000 would be lost to the county of Mower. That was the libel; that was the charge made against this untried magistrate—a man scarcely firm in his seat—of making a decision which, in the slow progress of the administration of justice, the Supreme Court of this state, some four years afterwards, affirmed. That there was any excuse or vindication for this libel, no man has arisen in his place with hardihood enough to affirm. That it was an atrocious lie was demonstrated by the abject retraction, which was afterwards published. That it was malicious, speaks trumpet-tongued from every line of it; that it was intended to break down this respondent and destroy his usefulness in the inception of his judicial career, will, I think, be made abundantly manifest before I close my argument upon another branch of this particular case. Mr. Mollison was arrested, and it is in proof by the officer who arrested him, that when he took him into his custody, informing him of that for which he was detained, instead of expressing any surprise or any contrition for his crime, he threatened to do just as he did afterwards in that court room to "*make his tongue ring*," against the respondent. Mollison is brought into court. He is arraigned at the bar. Any man with the least impulse towards decency would have acted differently. The district attorney read the indictment; Mollison was listening, and when the officer arrived at that part of the indictment which contained the words in which this malignant libel was set out, this man began to nod. The body of the county of Mower was there, the grand jury was presumably present; the best citizens in that community were there seeing their neighbor enter upon the yet unattempted task of his judicial position, and this impudent and infamous libeler, standing in the presence of justice, instead of behaving himself with a decorum which few men are so abject as altogether to lose the sense of, reiterated his libel by nodding his assent to it when it was read to him for the purpose of obtaining his plea.

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Under my construction, the respondent's decision of the case was correct. The statutes make the judges, for certain purposes, the guardians of the public treasury. The respondent did his duty in vacating a stipulation which made an attack upon the treasury under a false statement of what took place in court and of its records. Courts take judicial notice of their records and proceedings. I do not know, gentlemen of the senate, what there was

wrong in the respondent going before the commissioners and telling them, at their request, what was a fact. We all know that in outside districts much more freedom of intercourse exists between the judges and the citizens than perhaps does in the larger places. How natural it was for honest old Judge Felch, in the recess, when a disputed question of fact came up, to say, "I will go up to Judge Page's house and have him come down here, and find out"—not what the law is, but "what the fact is." The law was plain enough, and there was no dispute about it. I venture to say that there is not a district judge in this state who is not from time to time called upon by persons of co-ordinate branches of the government, exercising their functions of office to tell what has taken place in his court. He generally does it without objection; it is done without impropriety. And when Judge Felch became alarmed at what seemed to be a steal upon the treasury of the county, he went to ask Judge Page what the fact was. The respondent might have been more circumspect, he might have been more prudent, but he went there in the full consciousness that he was doing nothing wrong. And when the fact was asked him, he told the commissioners just as he understood it to be.

These indictments, gentlemen, were consequences of that riot, which this senate has solemnly decided it will know nothing about, which took place in the city of Austin in 1874. I stated there was a riot there. I have an impression that something has been said about it in this court. It has been more than darkly hinted several times here that there was a riot in the city of Austin, and it appears of record here that these men, Beisicker, Walsh and another, were indicted, as among the rioters. They were indicted at the September term, 1874. Whether they were arrested at that term or not my memory does not serve me, but I will venture the assertion that the demurrer was put in at the term at which the indictment was found.

The March term of 1875 comes around, and no notice having been made, no issue of fact joined, what do we find? We find French and Cameron joining hands in iniquity; they make up their minds "to put up a job" on the county treasury, and Hall and his deputy, Riley, join hands with them. Mr. French, without any consultation with the court, took out subpœnas for the state, and Mr. Cameron, without any leave obtained, as would be necessary in Judge Mitchell's district, ordered his respective clients to take out subpœnas for the defense. French takes out subpœnas for the state, for the witnesses "to be and appear and testify in a certain issue of fact" which had not been formed, and Cameron directs his

client to take out subpœnas for "the within named witnesses to be and appear and testify concerning certain issues of fact" which had not been formed! This was a double-handed theft, and how many witnesses Hall subpœnaed on behalf of the state, God only knows—this record don't show. But it is a moral certainty that that unregenerate Riley subpœnaed *ninety witnesses* on behalf of the defense, to appear and testify in an issue which had not been formed! More than that: although this matter was depending upon a demurrer, and he had subpœnaed ninety men, he did not have to go for any of them outside the corporate limits of the city of Austin, and I don't suppose the precious Hall had to go any further for his covey. It would not be expected that Riley, the deputy, *could* subpœna more witnesses than Hall, the sheriff. It would be gross insubordination to do so, and I take it for granted that Hall was not surpassed by his deputy in that respect. And so these ninety men are subpœnaed to come and testify upon an issue of law! And who do you suppose were in those subpœnas? Why, the very defendants themselves were subpœnaed as witnesses in their own case, and Riley taxes his fee against the county. And after Tom Riley had searched and raked as with a fine-tooth comb the city of Austin for witnesses whom Hall had not captured, he turns around and subpœnas *himself!* Having performed that automatic feat, he naturally looks around for other worlds to conquer, and it occurs to him that there still remain two individuals whom he has not grasped within the comprehensive powers of the subpœnas which he held, and so he subpœnas Cameron and Crane, the defendant's attorneys. And I have no doubt that Hall subpœnaed French.

Now, that is the transaction, gentlemen. I am making no misstatements, no exaggerations here. Those subpœnas are in this court, those names are on the back. This is the transaction, in all its original, unvarnished cussedness, just exactly as I tell you. And Judge Page is to be impeached, because, hating a thief—knowing one when he sees him—he doesn't, perhaps, round all the sharp corners of the law, but cuts across-lots after him with a club!

A conversation never can be understood until the whole of it is given, and in the intercourse which took place between Judge Page, Mr. Mandeville and Mr. Allen at that bench, it is not impossible that that question may have been asked, "what work did you do for Mr. Hall that he should appoint you deputy?" I don't believe it ever did, but if it did what is there wrong? What is there of judicial corruption necessarily inherent in it? What is there in it worthy of being dignified by such a prosecution as this?

If words proceeding from the mouth of magistrates or any person, are susceptible of two constructions, one innocent and one blameworthy, not only the law of charity but the law which is administered in the courts, imputes to that language the innocent meaning. Is there any feeling of hostility shown here against Mr. Mandeville or attempted? Anything to show that this judge was not acting magisterially on that occasion? Was *he* reaching his hand into the treasury to help anybody pilfer therefrom?

The statute imposed upon this respondent the duty of fixing the *per diem* of such deputies as the sheriff might appoint under his order fixing the number. Mr. Mandeville appeared before him as a claimant—he had to decide it. Did he decide it right or did he decide it wrong? The duty was upon him to decide that little case; the parties were before him—they were heard. And upon any theory, whether for prosecution or defense, he told Mr. Mandeville that he could not have his pay because the condition precedent, which the statute in guarding the public treasury had made indispensably necessary, had not been performed.

It is a new doctrine that, if money be paid in to a sheriff or the clerk, and sheriff or clerk embezzles it, the party wronged is to be driven to his circuitous action of assumpsit against a man confessedly a thief. Take our courts of record in a place like this—there are hundreds of thousands of dollars on deposit in the registry of courts for railroad condemnations, or as assets in bankruptcy; the officers of the court have this money; they must check it out upon the order of the court. Supposing that a person entitled to a sum under those circumstances, brings to the clerk the order of the presiding judge, and the clerk says, "I—I—I haven't got this money—I—I have disbursed it—I have sunk it." What in all time have all courts done with such culprits? They have laid their hands immediately and heavily upon them, and made them disgorge; they have the right to do it, and it is their duty to do it.

Let any one who has any curiosity remaining on that subject step over into the supreme court room and ask for the record in the case of Gronlund, an attorney of that court. It was charged against him that he had embezzled and refused to pay over the money of a client. He was cited before that tribunal; he made his explanation, such as it was. It was adjudged a high contempt of the courts of this state; he was ordered to refund it, and he languished in the jail of Ramsey county as a penalty for his crime. There is no trial by jury in such cases; none is necessary, the exigencies of public justice do not permit it. The supreme court of

this state did not err in that matter; it is a plain jurisdiction, given by the statute over all its officers, attorneys as well as others. There are two other proceedings of the same character pending in the court to-day; and there is not a district judge in this state, who has not, in the course of his administration of justice, been compelled, with a temperate yet firm hand, to execute the process of contempt upon the derelict officers of his court.

The respondent has made in his answer, full and sufficient reply to everything charged against him worthy of a moment's attention. He avers, in the first place, that he is the judge of that judicial district; he avers, in the second place, that for days there had been a riot in the city of Austin; that danger to life and property were apprehended; that meetings were held in the houses of citizens to devise means for public protection; that the streets of that town were guarded by patrols; that the sheriff had been inadequate and insufficient in the performance of his duty when requested by the mayor of the city to arrest the rioters. The respondent also alleges that while this insurrection against law and order was flagrant, he was called by the duties of his position from Austin to Preston to hold a term of court; that the riot renewed or rather continued; that danger to his family was apprehended, and he was summoned by telegraph, to put into execution the undoubted powers which inhered in him; that he did write a letter to the sheriff of that county—as I shall demonstrate he may have done, must have done and should have done—instructing him under the right he had to instruct him, that he should preserve the peace in manner and form prescribed by the statutes. * * *

The fact is, that this deputy sheriff went down there, engaged in a cow trade and took a bribe from Mr. Weller that he would not levy upon his cattle but that he would give him a chance to sell a cow so that he might steal $5.60 out of the proceeds of that live stock transaction. And the respondent is to be impeached.

It was a criminal act that Stimson had committed. He had besides made himself civilly liable to three times the amount which he had collected. He was an officer of the court; the process of the court had been used in trading cows—squeezing this $5.60 out of the county of Mower. It was a flagrant contempt of court. The more contemptible because it was so insignificant—a little, dirty steal!

Was the respondent wrong in taking an officer of his court to task for conducting the ministerial duties of his position in that manner? The grand jury investigated it. They made a formal presentment; the court called Mr. Stimson before it. An investi-

gation took place (as I shall show in a moment by an examination of testimony), and Stimson admitted every one of the facts charged without objection, exception or reservation, and as I shall maintain, without asking any further hearing than he had. Why, he was just like any other little thief caught with the money in his hands —he admitted it; he was willing to disgorge. There sat the grand jury before him—there was Mr. Weller in court, liable to be imprisoned again if Stimson was allowed to hold his money in this way. It is only a part and parcel of the way these men down there in Mower county treat the public treasury. He made no objection. He was requested to pay over the money so that the grand jury might see the process of deglutition reversed, and he walked up and did it. Now who will say that the action of the respondent was not right, and morally right? I may admit that he might have traveled the technical zig-zag of assumpsit or indictment, but he was not bound to do it in the case of an officer of his court.

If my proposition is true and my law is right, this man Stimson being a deputy sheriff, had neglected his duties; he had been guilty of embezzlement. He had also laid himself liable to damages, and how was he to be punished? To be punished summarily—in some cases having an opportunity to be heard. He had such an opportunity. The grand jury had made their presentment; it was read or explained to this man and he admitted it, as I shall show when I come to examine the testimony. Everything was done that he could have required to give him a hearing.

This proceeding is as old as the common law, and has been exercised in parliamentary bodies. Precisely the same principle was considered by the supreme court of the United States in the case of Randall against Bingham, reported in the 7th of Wallace, page 539. The grand jury in that case, upon the strength of a letter charged that an attorney and counselor had been guilty of such a violation of his professional duties as to induce the supreme court of Massachusetts to call that gentleman before them, very much as Judge Page called Mr. Stimson, and it disbarred him after a very informal hearing, and he sued the justice who disbarred him for damages, alleging, as Stimson does here, that he had no sufficient opportunity to be heard—possibly that he had not been indicted and convicted—that the law did not in stately ceremonial reach him in tangled ways. The case went through all the courts. Here is what the supreme court of the United States holds:

"The informality of the notice, or of the complaint by the letter, did not touch the question of jurisdiction. The plaintiff

understood from them the nature of the charge against him, and it is not pretended that the investigation which followed was not conducted with entire fairness. He was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself."

Here Stimson admitted the act, just as the grand jury charged it. "It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties on affidavit, and sometimes they are taken by the court upon its own motion." Such is the opinion of the supreme court of the United States. That is not only the practice in all courts in compelling extortionate officers to give up extorted fees, but it has been the practice in parliamentary bodies, and it was once adopted in a case of a man who will be revered as long as the English language is spoken or understood. I read from the life of the Earl of Nottingham, on page 194, vol. 4, of the Lives of the Lord Chancellors of England. John Milton was thrown into prison in disturbances which followed the overthrow of the Commonwealth, and while he was there some ancestor of Stimson squeezed the poet for fees. With the advent of better times the laureate of Paradise was liberated, and, having been committed under an order of the Parliament, the question of restitution was brought up. Lord Campbell writes thus:

"As a lawyer, I blush for my order while I mention Finch's last appearance in the Convention Parliament. John Milton, already the author of 'Comus,' and other poems, the most exquisite in the language, after being long detained in the custody of the Sergeant-at-arms, was released by the order of the House."

In 2 Bissell, 939, are the words: "A party who has been already tried, may protect himself against a subsequent prosecution for the same offense. He may do so by plea; it is a principle of our law that no man shall be twice tried for the same offense; if he has already been acquitted there is a known legal form of pleading as old as the law itself, by which he can defend himself. But it is settled by authorities coeval with the law itself."

Our statute provides: "SECTION 1. The judges of the several courts of record, in vacation within their respective districts, as well

as in open court, and all justices of the peace, within their respective counties, shall have power to cause all laws made for the preservavation of the public peace to be kept, and in the execution of that power, or for good behavior, or both, in the manner provided in this chapter."

Who are these rioters? Men who capture trains, rob homes, ravish women, murder citizens, and who are rapidly, by some strange social elective process, taking unto themselves the forms of belligerent organizations. In our cities a wilder vagary has found expression. That which was formerly deemed to be an exotic, has been discovered to be indigenous, though heretofore dormant in our soil. In Chicago, in St. Louis, in New York, in every considerable city of this country, the horrid front of communism has been reared. It threatens the holy bounds of property. It has its organization, its design, its avowed purposes, and bears to the other portent the relation of fire to powder. Only last year the electric thrill of one riot ran from the sea-board to the Mississippi river, and palsied the great arteries of commerce in a day; it sacked and burned the mighty city of Pittsburg; the great state of Pennsylvania, with its four millions of people, lay crushed in its folds, and the authority of the federal government was powerless for a time.

With the coming of the harvest, there will sweep over the face of this state, bands of lawless men, unarmed now, perhaps to be armed in the future. From a sightly hill near the farm of the senator from Wabasha I venture to say that in two months, thousands of those men can be counted coming no man knows whence, and going no man knows where. And I say that in these times when such dangers are reasonably to be apprehended, the magistrate who has the courage to command the sheriff of his county to execute the law by taking life if necessary—to tell the citizens that they shall be protected in doing what the law says they may do—deserves the plaudits and commendations of his fellow men, instead of being arraigned before a court of impeachment. This charge is a public danger, senators. A few men like Sherman Page might have saved the city of Pittsburg that day. There would not at least have been that abject cowardice, while millions of property and hundreds of lives went out of existence—and when I see a sickly sneer of incredulity upon the face of any man who lives far secluded from any danger of that kind, it makes me tremble for the justice of this court.

This same question arose in a very interesting form in Ireland. In 1823, when the Marquis of Wellesley, I think, was the Lord Lieutenant of Ireland, a riot took place in the theater of Dublin

In the course of that riot the person of the Lord Lieutenant was assailed. Missiles were thrown at him, his life was endangered. It was a riot which grew out of the feuds which have distracted that island for so many centuries. When the offense was brought to the attention of the grand jury, so powerful was the influences in favor of the rioters, that the inquest were prevailed upon to report that they found no cause of indictment, and they threw out the bill. The offense was so clear and the offenders were so well known, that Mr. Plunkett, who was then the attorney-general, filed an *ex officio* information, which is equivalent to an indictment, in the court of king's bench. Instantly the cry went up that because the rioters had just been absolved by the grand jury, the attorney-general was guilty of a grave violation of law in seeking to bring them before the courts for trial. And upon that occasion Mr. Plunkett, with great eloquence and great power of thought, vindicated himself before the Irish Court of King's Bench.

[Here the counsel read the case at length.]

Another was a case in Southern Illinois where the plaintiff alone appeared.

But the case was ready for trial. The other attorney was sharp and eager to overreach, and the necessity of going to trial before the train arrived was great. Justice Davis told him such was his right, of course; he could go to trial, "but," said he, "we had just such a case as this down at Springfield the other day, the other lawyers were not there, and I was obliged to try the defendant's case for him, and, do you believe it, we beat?" I have no doubt that lawyer thought that Justice Davis ought to be impeached.

Judges have a paternal care over the interests of the public and the interests of suitors, and they have a wide latitude of discretion in their courts. To those persons who are at all familiar with the outside literature of our profession, such anecdotes as I have recounted are old and stale; they show what the power of the judge is to do right outside of any precedent which you may find laid down in the books.

In ancient times, the powers of judges over juries were very extraordinary, very extreme. In regard to a verdict of a petit jury, if it was corrupt there was a judgment of attaint against every member. It is a most extraordinary judgment, as I extract it from an old law book, and it reads like an apostolic anathema:

"It is adjudged that they lose the protection of that law which is the right of free men and be infamous for ever; that they forfeit their goods and chattels; that their lands and tenements be taken

into the hands of the king; that their wives and children be thrown out of doors; that their trees be uprooted, their meadows plowed up, and their bodies cast into prison."

Now, right here comes a conflict of testimony which I do not deem very material. I do not deem it very material in view of these facts, whether the respondent did roundly charge them with having violated their oaths, or hypothetically say that they might have done so, for, gentlemen, there was, on that occasion, by that jury, an undoubted violation of official duty, plain, clear, and palpable. The weight of testimony in this case, juror after juror, the foreman, the county attorney, those who were present (I cannot enumerate them all), prove that Judge Page told that jury that of course he could not dictate to their consciences, but that if the facts were as they had reported them, and they had disregarded them, they had certainly violated their oaths; words he had the right to say, words which it was his duty to say. It was a false verdict; it was a false finding. When they reported to him that they had no further business, with the ink not yet dry upon that paper wherein they had presented a state of facts which required an indictment, they stood there self-convicted of gross malversation in their duties, and it was the duty of any magistrate, who did not cower, as judges are too apt to do in these days of elective judiciary, before a diseased or complaisant public sentiment, to tell that jury, in the face of the public whose rights they had failed to vindicate, just what their conduct had been. If he had done less he would have failed in his duty, and that Sherman Page ever feared to do what he deemed to be his duty, no man has had the temerity here to charge.

It is no unusual thing, gentlemen of the senate, for judges to treat the action of juries in such a way as this. My learned friend and I tried a case before Judge Melson, of the United States court, some time ago, and one of us got a most outrageous verdict. The court, without waiting for any motion from either party, set that verdict aside in the very presence of the jury upon his own motion, with some remarks not very complimentary. A madder jury than that you never saw. They were a great deal madder than Mr. Clough or I was about it. They were very clear for a few moments that the judge had transgressed upon their province.

I witnessed a similar spectacle some years ago between Judge Dillon and a jury.

An anecdote is told of Justice Grier of the Supreme Court of the United States, a fearless judge, who passed a long life in the pure and upright administration of the law. An action of ejectment

for a farm had been brought in his court. Technically the plaintiff might recover, but actually his claim was a most unrighteous one. The jury brought in an unrighteous verdict, stripping the defendant of his farm; and the old judge, leaning over the bench, said to the clerk in the presence of the jury: "Mr. Clerk, set aside that verdict; I want this jury to understand that it takes thirteen men in this court to steal a farm." I have no doubt that plaintiff thought that judge ought to be impeached.

Great, fatherly Mr. Justice Davis, now Senator Davis of Illinois, perhaps, should have been impeached for a little performance of his some years ago, in protecting a defendant who was in court without his lawyer when his case was called.

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I desire to state, in the first place, senators, in regard to this charge, that although courts from the beginning of time have laid a strong, severe and relentless hand upon persons guilty of contempt, that, so far as I know, this is the only attempt which has ever been made to impeach any judge except Judge Peck for asserting and upholding the dignity of his court. By common consent, as well as by legal precedent, the courts of this country, for the purpose of protecting their dignity and of maintaining themselves in the confidence of the people, are invested with an arbitrary, direct and absolute power, not exercised through any jury, not exercised under any indictment—exercised frequently upon view. The necessities of the situation have also caused the introduction into this very narrow and restricted field of our jurisprudence, the converse of the maxim that no person shall judge in his own behalf. A contempt of court cannot well be punished by another court; because it is necessary a contemptuous act toward the man in whom the court is embodied, and whose duty it is at once to protect himself and make an immediate example, and hence we find that, owing to the exigencies of the situation—the same necessity which suspends all law under certain circumstances, which establishes martial law in times of war, which abrogates all law in times of fire and riot—also confides to the judges a certain power which might be called absolute—if that word were not an offensive one to an American ear—but a power which, I will say, is exercised differently from that entrusted to them in the ordinary routine of judicial proceedings. It is also a proposition in the law of contempt, that great and extensive as it is over all the citizens of the community, it is much more rigorous and exacting over the officers of the court.

When a person takes upon himself to become the ministerial

officer of a court, he impliedly agrees, indeed he expressly stipulates, to assert its dignity, to preserve its decorum, to maintain its authority. In regard to the position of subordination to the judge in which he places himself, it is particularly to be said that he submits to certain rules of discipline, not indeed regulated by the discretion of the judge, but well defined by precedents. Mr. Stimson was such an officer of this court; he was a deputy sheriff; he was the ministerial and executive officer of this court. Through him the court acted. It is through the sheriff that the power of the court is made manifest to the people, through its writs and processes. The judge, in his seclusion, has no executive power. He is simply seen and heard; he is never felt except through the sheriff who executes his decrees, and hence the importance of the rule that the executive officer of the court shall always maintain, instead of derogating from its dignity; that he, being that presence or manifestation of the court most frequently seen, and which oftenest touches the community in the daily concerns of life, shall deport himself in such a manner as to certify to that community that the authority which he executes, the magistrate under whom he sits, is worthy of the confidence of the people upon whom and among whom the court administers justice and he executes it. It is unnecessary for me to say, with any elaboration of statement, that for any person, much more for a person occupying such confidential and intimate relations to the court and to the administration of justice, to publish a libel upon the court itself, is not only a crime indictable, but a very gross and flagrant contempt. A sheriff who is so audacious as to strike a magistrate down upon the bench, would meet with instantaneous punishment at the hands of the court. The sheriff who should go out doors and make a noise in such a way as to distract the orderly and decent administration of justice, would be speedily stopped in his noisy manifestations. These would be most offensive acts of contempt. But the sheriff who inoculates the public through a newspaper or through a written document intended to be published in a newspaper, with the virus of contempt, which the judge, from the dignity of his position, cannot contradict or controvert, who puts in motion an agency which no human power can recall—who sends forth into the air those spoken words which can no more be taken back than I can take back what I have been saying here for the last two days—who puts into execution processes of injury irremediable by any art known to man, to be remembered forever—commits a more lasting insult to the court than he who strikes down a magistrate in his seat of judgment.

Now that Mr. Stimson has had a libel in his possession, and had been conferring with certain conspirators in regard to it, is one of the facts in the case which has not been, and will not be, contradicted. That libel is as follows:

"*To* S. PAGE, *Judge of the District Court, Tenth Judicial District, Minnesota:*

"SIR—Knowing you, and believing that your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than your desire to do right; that you will sacrifice private character, individual interests, and the public good to gratify your malice; that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice; that you have disgraced the judiciary of the state, and the voters by whose suffrages you were elected; therefore, we, the undersigned citizens of Mower county, hereby request you to resign the office of Judge of the District Court, one which you hold in violation of the spirit of the constitution, if not of its express terms."

It is perfectly apparent, senators, from the appearance of Mr. Stimson upon the stand, that this stilted piece of malignity never proceeded from his brain. His pen never indicted it. It is the offspring of the cowardly malice of some person who knew better than to identify himself with it in public. It is a rank, overgrown and crude imitation of a certain style of calumny made memorable by Junius, and never yet reproduced with any degree of likeness by any of his imitators.

Furthermore, this document was never intended to be presented to this judge; it never was presented to him as a matter of fact. After it had been circulated, the conspirators concluded, in the chaste language of one of them, "that there was too much hell in it," and they concocted another. But the one which I just now read was intended to be published through the county of Mower for the purpose of prejudicing the public mind and bringing the administration of justice into contempt.

These men who conceived this project knew well enough that the charges which it contained are arrant falsehoods; that no private suitor, except Riley, in all the length and breadth of his district, could be produced who would say that, in regard to any suit, the conduct of this respondent had been other than most magisterial and just. They knew perfectly well that such men as Richard Jones, a man of magnanimity with all his hatred, and Mr. Cameron, a man of character, although the bitter enemy of the respondent, not speaking to him from a time long antedating his accession to judicial position, would state, as they have stated under oath here, that a more impartial man never sat upon the judgment seat.

This document is an emanation from that same band of conspirators whom I purpose to dissect by and by; who form this overpowering public sentiment of which we have heard so much, and which has resolved itself into so little as far as the number of its individual members is concerned.

The time chosen for the circulation of this document was during a term of court. It was circulated, not only during a term of court, but it had been circulated before, and the question arose before the respondent, and was propounded to him by the very logic of the situation, whether he should sustain the dignity of his court against attacks of which this was a sample of many, or whether he should say, "I fear that this band of malefactors is too strong for me, too strong for the law, and therefore I will sit down and become contemptible, and allow my court to become contemptible, in the eyes of the people among whom I administer justice." His position was one of great delicacy; it was one of exceeding importance. Does any senator suppose that if that libel had been circulated with impunity, other disgraces would not have followed? We have seen this respondent's house surrounded with these rioters, whom this senate has determined it will know nothing about; we have seen him libelled by Mollison and Davidson and Bassford, in 1873; and that libel suffered to gnaw at his reputation like a vulture, for for five years. And now, at this time, after having been goaded in his judicial capacity and outraged as a private citizen, this respondent was confronted, not only with the responsibilities, but with the duties of his position, under a libel more calumnious than its predecessor, should he not do his constitutional duty? * * *

Let me read the words of another:

"If in English history we inquire into the original occasion foi these constitutional provisions, we shall probably find their origin in the abuse of executive authority, and in the unwarrantable intrusion of executive agents into the houses and among the private papers of individuals, in order to obtain evidence of political or intended political offenses. The final overthrow of this practice is so clearly and succinctly stated in a recent work on the constitutional history of England, that we cannot refrain from copying therefrom."

It relates only, as any senator may demonstrate for himself who examines the constitution on that subject in the light of history, to search-warrants for property, where seizure of the person is also included as a part of the act to be performed by the officer; and it ordains that it shall not issue upon the mere will of any officer, executive or judicial, and that it must contain a description of the

persons to be seized and the places to be searched. But it applies only to these warrants, leaving the other questions of the administration of criminal jurisprudence to other provisions of the constitution and to common law safe-guards. If my learned friend's view is correct—if a magistrate cannot arraign an offender guilty of contempt without complying with that provision—then the whole chapter of contempt, as found in the statutes of Minnesota, is void; because we both agree that if the chapter authorizes anything, it does authorize the judge to proceed against the offender in some cases without any affidavit, complaint or process whatever. If his view is correct, then, also, is void the provision which authorizes any person to arrest another whom he catches in the perpetration of a crime, or who is recent and warm from its perpetration. But the fact is, that these provisions were never held to apply to judicial proceedings for the enforcement of the criminal law, except incidentally and in certain cases. They were never held to apply in cases of contempt, any more than in cases of contempt the provisions of the constitution were held to apply, which provides that in all cases one accused of crime is entitled to a trial by a jury of his peers. Now, we all know that a person who is accused of contempt is not entitled to a trial by jury. He is tried summarily by the magistrate. The necessities of society require that the courts shall be rendered respectable, and that at the same time the wheels of justice shall not be stopped or clogged in punishing offenses of this kind by the ordinary formal instrumentalities of judicial procedure.

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Nearly all of these articles of impeachment are so trivial as to seem, at first view, scarcely to warrant the serious discussion they have received. But as we have proceeded in our duties we have become persuaded that the danger in the charges is not what they allege, but lies in the principle upon which they are based; that the danger is not to this respondent but to the public itself—for the spirit which inspires them all is the spirit of revolt against constituted authority. It has appeared in that most dangerous form of an attack upon the judicial department of the state, upon its integrity, upon its independence. There is, after all, a wise conservatism in the people, and while they make and unmake with a breath the executive and the legislature, they instinctively refrain from subjecting the judiciary to the attacks of prejudice or disaffection. They do not require a judge to be popular. They require him to be honest and as firm as the system of law which he administers. They recognize the fact that there must exist in all forms of gov-

ernment an ultimate principle of absolutism and permanency, an impregnable barrier against the fitful mutations of the hour, an inexorable expounder of those laws of self-preservation which precede the formation of states, which preserve property, which secure liberty, which bear with unintermittent force upon the concerns of society with all the power of gravitation. In our system the judiciary is this principle. It is this cohesive principle of our system which is this day attacked, in the person of a judge whose integrity has not been questioned even by his enemies. Our entire policy is thus assailed at its strongest point. If you destroy that which is most permanent, the efficacy and independence of the rest of the structure will fall in ruin without further attack, merely as the logical consequence of such a process. Is it not well for us to pause? Rude usurpers, aggressive kings have paused at this decisive point. Shall we be less wise than they?

It is the prerogative of Shakespeare that whatever he stoops to touch becomes authoritative in quotation. He is the magistrate of both imagination and reason. There is scarcely a topic in the universe of human thought which that marvelous mind has not compassed in its cometary sweep. He has walked in the abyss of human nature and seen the thousand fearful wrecks, the unvalued jewels, and all the lovely and the dreadful secrets which lie scattered in the bottom of that illimitable sea. The maxims of policy, the rules of war, the subtleties of love, the patient forecast of hate, the pangs of remorse, the ready wages which jealousy always pays to the miserable being it employs—all things over which the mind or the nature of man has jurisdiction, receive from him their definition and expression, excepting those awful topics of the hereafter, which, of all the children of men he, the greatest, has been too reverent to touch. He knew of the circulation of the blood. In instance after instance he has not only used the terms of the law with the strictest precision, but has stated its abstrusest principles with entire correctness. So wonderfully true is this assertion of his despotic empire, that conjecture, in its baffled extremity, has declared that the hidden hemisphere of this world of thought must be Francis Bacon, who, in his youth "took all knowledge for his province," as if it were his heritage. Shakespeare has created an immaterial universe which will, like him, survive the bands of Orion and Arcturus and his sons.

He peculiarly knew the limitations of power and authority, and enforced them by many constitutional illustrations. And in that respect he has presented no finer exposition than that one where he magnifies the sacredness of judicial authority in the scene

between Henry V., lately become king, and the chief justice, who had formerly committed him for contempt.

The old magistrate stood trembling before the young king, whose life had given no warrant of wisdom or integrity; for he had in his reckless days been the boon companion of Falstaff and his disreputable associates.

Referring to his humiliation by the judge, the king asked,

> "Can this be washed in Lethe and forgotten?"

The judge interposed this memorable defense:

> "I then did use the person of your father;
> The image of his power lay then in me;
> And, in the administration of his law,
> While I was busy for the commonwealth,
> Your highness pleased to forget my place,
> The majesty and power of law and justice,
> The image of the king whom I presented,
> And struck me in my very seat of judgment,
> Whereon, as an offender to your father,
> I gave bold way to my authority,
> And did commit you."

It prevailed, for the king replied:

> "You are right, justice, and you weigh this well;
> Therefore still bear the balance and the sword;
> And I do wish your honors may increase,
> Till I do live to see a son of mine
> Offend you, and obey you, as I did.
> So shall I live to speak my father's words—
> Happy am I, that have a man so bold,
> That dares do justice on my proper son:
> And not less happy, having such a son,
> That would deliver up his greatness so
> Into the hands of Justice. You did commit me,
> For which I do commit into your hands
> The unstained sword that you have used to bear,
> With this remembrance: That you use the same
> With the like bold, just and impartial spirit
> As you have done 'gainst me."

Of all the illustrations which Shakespeare has given to authority, in its highest and lowest estate, I know of none finer than this. Not Richard sitting upon the ground and telling sad stories of the death of kings when all his fleeting glory seemed but a pompous shadow; not Prospero, the ruler of two realms, who by virtue of his sway over his immaterial kingdom looked upon the great globe itself as a phantasma merely, which would vanish with all its cloud-capped towers, and gorgeous palaces, and solemn temples; not Lear invoking from the elements themselves the abdicated regalities of his sovereignty, seem to me so imposing as this semi-barbarous youth respecting the majesty of the law in the person of its faithful servant.

You can bow before this mob. You can lead an attack which will be repeated upon every department of our government by all the blatent and riotous law-breakers of time to come, who may rise up in rebellion against statutes enacted for their condemnation, against magistrates who condemn them. Or you can make enduring the endangered functions of the state. You can quell forever that arrogant spirit of insubordination, before which no judge is sacred, no constitutional provisions are obstacles. Say to this respondent—

> "Therefore still bear the balance and the sword;
> * * * * *
> The unstained sword which you have used to bear
> With this remembrance: That you use the same
> With the like bold, just and impartial spirit
> As you have done."

and this proceeding will live memorable in our history as one of its preservative events.

Now, gentlemen, I have gone through these articles. I am loth to leave them, even now, exhausted as I am, and late as the hour grows to be. Standing here and looking back over the path which I have trodden so wearily to me, and I know to you, I can see how a better man and a more attentive understanding might have grasped this case more vigorously than I have done. I have endeavored, fairly, honestly and conscientiously, with no legerdemain or jugglery of intellect, or sophistication of your understandings, to state the law as I honestly believe it to be, to state these facts, so far as my weak recollection serves me. If I have erred you will correct me. I besought your correction as to facts early in my argument. No senator made any, and I presume I have been in the main correct. But there is one thing of which I do wish to treat before I take a last farewell of this case. Whence comes this prosecution? Are we not now, in this stage of the proceedings, after we have torn to shreds calumny after calumny, entitled to ask the senate of Minnesota and the public of this state, for whom these proceedings are instituted, and for whom this expense is made, whence comes this impeachment, which has swallowed up so much of the public money to so little purpose? I have now ceased to speak for the acquittal of Sherman Page; I speak now for his vindication. I propose to bring into court the men not now in court. I cite before this bar Ingmundson, French, Cameron, Crandall and the rest. I assert, and I propose to demonstrate within the short time which I have imposed upon myself, that this is a conspiracy to ruin and break down the character of a

just and worthy man. I do not say that Judge Page is the most lovable man in the world. He is a man of angular disposition of character. He never mixes much with men; he is a man of the closet and of books. That he is a man of strict integrity it is unnecessary for me to say; that, no man has come here to doubt or to dispute. Then whence, I say, comes this little angry cloud so full of thunder to blast him?

It appears that the respondent attacked one of Mr. Cameron's friends, and that man resigned under charges preferred to the Governor. It appears that the respondent, leading an honest public sentiment, then attacked for official malversation another citizen of Austin, a county commissioner, and he resigned and got out of the way. To bring a suit against a defaulting treasurer in that county is a crime worthy of impeachment; and when the sureties of Smith saw that they might be compelled to disgorge the amount which the attorney-general of this state felt warranted to call upon them for, they immediately arrayed themselves in opposition to the respondent. In the meantime he became judge. That he is an active, vigorous man, who hates a thief, and does not fear him, sufficiently appears. He never has been arraigned for tampering with the money of the public; so far as his conduct has passed under your scrutiny he has always been on the side of right, and the only criticism that can be made is as to his manner of performance of his duty. In the meantime, as I have said, he became judge. He is placed in a status of legal monasticism. He cannot retaliate, he cannot keep up the fight. The suit which he has brought as an attorney he cannot try; it goes off into another district; it comes before my honored friend, Judge Waite, in an incidental way. He is placed with his hands tied by the proprieties of his position. He can no more strike back than a penitent can strike back when his hands are raised in prayer. He is in a sacred place, and these men keep up that unholy war against him. I do not speak outside the record which they have given. It is so. He no sooner takes his seat upon the bench than this man Mollison, under the instruction of Davidson and Bassford and somebody else, accuse him of judicial corruption, in deciding a case in favor of the Southern Minnesota Railroad Company, and charged that he had given away $50,000 of the money of the county of Mower. Shortly afterwards, Mr. Ingmundson, Judge Page, it appearing, not having been in a convention or caucus since he was judge, goes into a county convention after he had received a nomination, and denounces the respondent to an excited people. In the meantime came up the whisky riots at Austin, threatening the

public peace, and the sheriff of that county and the others jeered at the man who by the laws of this state is the prime conservator of the peace over four counties. He left his home to attend to his official duties, and when the lion had gone the jackals all came out and bayed around his house, calling forth that order to Bayard that he should protect his property, his family, and the peace of the other citizens. In the meantime, the voice of calumny, printed and written, is continually lifted up against him. The most outrageous charges are made, to go forth upon the wings of the wind. I have known Sherman Page for years, gentlemen. I know him well, probably better than any other man upon this floor; and I must confess that those charges were repeated with such an acerbity, persistence and reiteration, that I was afraid my friend might have gone astray. I knew he would not, unless goaded beyond the power of human endurance to resist. I am rejoiced to find that my own fears were untrue. He resorted to those remedies which the law gives every man. He invoked the process of the court. It only had the effect of widening the confederation against him, and of bringing to bear upon the legislature of this state those powers which were thought necessary for his final and effectual ruin.

What prejudices have not been adduced in his case? What miserable prejudice of nationality, or caste, or feeling, or party has not been appealed to here? It has been particularly attempted to be made to appear that a man by the name of Riley was called an "ignorant Irishman;" that is for the benefit of somebody. Ingmundson has been paraded here as a martyr; that is for the benefit of somebody. It seems that Judge Page is a temperance man; that is lugged in for the benefit of somebody. Every prejudice that can move minds, however unworthy, has been industriously plied in his case. I know, and you know, senators, that some of you have been approached in a way in which no judge should be approached. You have not been able to shut your ears to this persistent clamor, that this man shall be wrecked and ruined forever in this world, and that the acts, the hopes, the ambitions of a lifetime shall be made ashes and dust. The arguments of counsel have been belittled in advance; the character of men has been wantonly run down and crushed. It is assumed that this man must be guilty, because someone has accused him; and yet, when you come to sum it up, who are the accusers? Mollison, the libeler; Riley, the man who attempted that steal upon the treasury, subpœnaing ninety witnesses in a case which the defendants themselves said would never be tried. Mandeville, angry because of a decision made

against him in a matter of some six or fifteen dollars, I forget which; Stimson, a deputy sheriff caught in peculation, Ingmundson, angry because a grand jury had the audacity to even inquire how he managed his office; French, a man utterly unfit to be entrusted with any public duties in his profession, as his own testimony and that of Mr. Kinsman demonstrated. This man, who, before Judge Page, when Stimson was being examined in a contempt, volunteered those statements about a newspaper published in this city—volunteered the statements, and now says that the court extorted them from him! Where is the man of substance in the county of Mower, who represents this overpowering sentiment, as it is called? French, sitting here by the ear of counsel, like the toad "squat by the ear of Eve." Cameron, with his forehead of brass and unflinching eye; Harwood, flitting in and out of this hall like a disgusted ghost, fearing to be sworn; Ingmundson, with his baleful glare; McIntyre, with his manly hate! Pooling in money! Pooling in money! One hundred dollars! Fifty dollars! They have levied assessments on each other for the purpose of private prosecution, through public processes. And the unparalleled spectacle has been presented to this court, never before known, of private prosecutors coming in with private counsel, paid by private means, and taking entire charge of a public case! Instances have occurred where the state has had managers with eminent counsel; but I say that this is an instance of unapproached and unprecedented infamy, where a private mob has been allowed to invade a proceeding like this, and conduct and direct the prosecution. This conspiracy finds its last expression here in that act. Why, what a community the town of Austin must be! What a community it has been from the beginning! When did you ever hear in this state, since any of you have lived here, that the devil himself was not roaming up and down that town, "seeking whom he might devour?" It has always been a contentious and troublesome place, full of turmoil. That community takes sides on every question. They are rancorous, senseless, hateful. Look at these witnesses that come here. Man after man—Hall, French and the rest; one filling out where the other fails. If one of them goes out to get his meal, the other takes his place. The everlasting and endless chain of misrepresentation runs smoothly on. It is a bad generation:

"They are all gone out of the way; they are together become unprofitable; there is none that doeth good, no, not one.

"Their throat is an open sepulchre; with their tongues they have used deceit; the poison of asps is under their lips;

"Whose mouth is full of cursing and bitterness;
"Their feet are swift to shed blood;
"Destruction and misery are in their way;
"And the way of peace they have not known;
"There is no fear of God before their eyes."

Gentlemen, from my earliest days I was brought up, as the respondent doubtless was from his early youth, to look forward to that time when I should enjoy the confidence and esteem of my fellow men in official station. It is the natural dream and aspiration of every American citizen, whether by birth or adoption.

Here we stand, all of us, some to the manner born, and some of you from the lands which you never more shall see. You may talk about the enjoyment of life, of riches, of social or domestic intercourse, of freedom of person—all of these yield to the wide, unbounded and beautiful prospect which is spread out before every man worthy of it; of the esteem of his fellow citizens, and promotion at their hands. It is what we all live for, disguise it as you may; each of you occupies a seat here by virtue of some laudable ambition in that respect. I think I might be resigned to any one who would take my life—I certainly would be resigned to any one who might take my property; but if any man proposed to close before me forever the way to the honor and respect of my fellow citizens, so help me God, I would rather die! That is what is proposed to this man. I make no plea here for mercy. He would rebuke me if I did. He feels that he has done right in this matter. I have read somewhere, or heard some man say, that if you remove him from office you need not necessarily say that he shall be forever disqualified from holding office of trust or profit under the laws of this state. That is true—in a pettifogging sense, that is true. But, if you remove the respondent from office, because you judicially say, by a two-thirds vote, that he is a felon, does not the consequence follow from which the author of that evasion fears you will shrink? Indeed it does.

Is he a felon? Does he deserve, if he had been a common criminal, to wear manacles, and to be incarcerated for years? I say the the same result will follow your simple vote that he be impeached and removed from his present office. There is no mountain top so high, no vale so secluded, no ocean's deep so unwhitened by a sail, that wherever he may go on this earth, the disqualifying and attainting consequence of conviction will not follow him.

Gentlemen, you yourselves are on trial here, or will be by posterity, as judges, as this man is on trial as a judge. This record

will survive in imperishable print, to be read by your children and your children's children. You yourself, like Lord Bacon, must appeal to the foreign nations and the next ages for your vindication in this respect. You yourselves will be on trial long after you have passed away, and all concern in you and recollection of you will be lost, except as preserved in the precedent you are about to make. Place yourselves in the position of those who are to come after you. Endeavor, if you can, to read this record in the clear, calm light of after-times. So reading it, can each of you, any of you, under the obligation of your oaths as judges sitting under the law of God, and accountable to God Himself, say that this respondent shall be deprived of the office which he has adorned and be fixed in the death in life of civic annihilation?

He was acquitted amid great applause.

THE BURCH DIVORCE CASE.

Tried near Chicago, November, 1860.

STATEMENT—ARGUMENTS—RESULT.

The greatest divorce suit in the West, if not equal to the famous Forest Case, was the trial of Burch against Burch, held at Napierville, near Chicago, in the fall of 1860. The bill had been filed in January by Mr. Isaac H. Burch, a wealthy banker in Chicago, who, with his young and interesting family, occupied a high social standing in that city, with numerous influential Eastern connections.

The ground for divorce was an alleged criminal intimacy of Mrs. Burch with David Stuart, a lawyer and congressman and a friend of the banker's family, whose social rank was also exalted and unquestioned.

The litigation at once attracted marked attention to all of the details of the case, and speculations grew so intense, with expression of opinions so frequent, that a motion was granted to change the venue from Chicago to Napierville, early in June, 1860.

The testimony was lengthy and largely taken by commission, and the greatest bitterness was manifested from the start between counsel and contestants on every technical point to hinder and embarrass each other. The previous good character of Mrs. Burch was established by the highest evidence.

While the evidence was unusually long, and taken by depositions, both in Illinois and New York state, it all amounted to a series of *indiscreet walks, talks and visits* between Mrs. Burch and Mr. Stuart and one Boyd—enough in all to make a sensational Chicago scandal, which will be dealt with, without the terms, words and phrases, usually attached to such cases.

The parties being very wealthy and well connected, the whole matter flew over the country, through the newspapers, like a gale of wind. Hon. Erastus Corning of New York, uncle of Mrs. Burch, employed Hon. C. Beckwith of Chicago, Hon. C. H. Browning of Quincy, Hon J. F. Farnesworth, R. N. Murray, Esq., of Kankakee, and E. W. Smith, D. G. Colefield and G. Sedgwick, Esqs., of Chicago as counsel.

For Mr. Burch appeared J. Hoyne, H. L. Miller, A. L. Lewis, Jno. Van Arman, H. C. Walker and Wert Dexter of Chicago, U. Osgoode of Joliet, W. D. Barry of St. Charles, and Messrs. Vallette and Cody of Napierville.

The case in detail would be immensely tedious, and only serve to show to what great length a family quarrel could reach. It is thought better to condense all to a short story and retain the essential particulars, and show the adroitness and ingenuity of counsel. The labor of reducing, and mass of matter excluded, has been very considerable. Many excellent passages of arguments are omitted, a few rare extracts reported. It was said to be Mr. Van Arman's greatest effort, and Mr. Browning was then the peer of Stephen A. Douglas. The selections reported are too brief to need separate mention. They are all eloquent with facts.

The bill for divorce filed by Mr. Burch shows that on the twenty-fifth of May, 1848, he married Mary, his wife, at Albany, and immediately removed to Chicago; that he had born to him two children; that on the fourteenth of October, 1857, his wife committed the indiscretions with David Stuart, and renewed the same at intervals, and with other persons at various times and places. Mr. Stuart was known as an able lawyer in Chicago, and as an intimate in the Burch family. Mr. Burch was knit closely to the best society of Chicago by the ties of business and of church membership.

Mrs. Burch denied not only the direct general charge, but made

her denial and explanation so full and explicit as to cover every possible point raised during the progress of the trial. It is certainly one of the most affecting and thrilling statements of a woman's sufferings and a man's wrongs which was ever penned. If we believe it true, it is most terrible. "In every line the formality of the lawyer seems to be struggling with the deep pathos of a woman's wrongs, as if Justice shed tears as she heard the story." Mrs. Burch said that she was convinced that her husband married her for the money he expected to receive with her from her uncle, Erastus Corning of Albany, and for the assistance such a connection would be to him in his business.

Mrs. Burch relates, with minute fidelity, the various occasions upon which she met Mr. Stuart, and how he gave her a book, which she left on the parlor table; how he once caught hold of her arm—the only familiarity he ever took with her; how once, being engaged with Stuart, she said, "Not at home" to Mr. Farnam, and afterward apologized and explained the mistake; and repeatedly denies that she ever had any criminal intercourse with him whatever. Their acquaintance was at first hardly familiar, but they met repeatedly; repeatedly Mr. Burch invited Mr. Stuart to his house to meet such men as Hon. Edward Everett and Senator Douglas, and included his name upon invitation lists; seemed to esteem him as a dear friend.

Unfortunately, however, for her own safety and future peace, she wrote a long and lamentable letter to her pastor, Rev. Mr. Patterson, in which she hinted at the familiarity and indiscretions, and tacitly admitted that she had sinned. This was a serious obstacle to surmount, and all the adroitness of counsel was needed to remove its weight and break its force with the jury. At a later stage she signed and swore to an alleged confession before a notary, conveniently near for that purpose, and this was greatly to her prejudice. She was then hurried home to New York, and her name scraped from her trunk, and harsh means used to humiliate her with her nearest friends.

The excitement of the trial attracted hundreds from the surrounding country, where farmers left their fields and merchants their stores, to listen to the sad but romantic story of a home in ruins. The result of the trial is the most sensational ever reported, and excited the whole state and northwest. The pick of the Illinois bar were engaged in the trial. Mr. Miller opened for the prosecution, detailing substantially what has been shown, with full particulars of the evidence he would offer. He spoke at great length and with much solemnity, and closed with the following letter.

Mrs. Burch's Letter to Rev. Mr. Patterson.

ALBANY, *Jan. 27, 1860.*

MY DEAR MR. PATTERSON—Will you pardon me for thus addressing you, but I am in such distress this morning, I feel as though I must look to you, my former friend and pastor, for advice and sympathy. I feel that a few words of consolation from you, with the assurance that I had your prayers, would do me great good. I beg that you will not cease entirely to take an interest in me, for if ever I needed the prayers of Christians I do now, when I am an outcast—a poor lone wanderer upon the earth—shunned by all, and loved by none. I try to feel that for such as I our Savior died, and I pray that my sins may be washed away. "But your iniquities have separated between you and your God, and your God hath hid his face from you that he will not hear." This I feel most deeply. Do you think he will hear me when I call upon him? "My lips have indeed spoken lies, and my tongue hath uttered perverseness." I feel all this most deeply, and I try to find comfort in his blessed word. "Behold the Lord heard. His arm is not shortened that he cannot save; neither is his ear heavy that it cannot hear." This comforts me; but, oh! at times my sin is so great, the sense of my iniquity is such, that I feel utterly lost and undone. I pray, and often, that I may be forgiven. I know that "the vilest sinner may repent," but I think sometimes that there was never one so vile as I. My doubts, fear and despair then overwhelm me. I try to feel that God will in his own good time, do all things well. I know he does; but, oh! my burden is so heavy, my sin so great, I do cast all upon the Lord, and I know he will sustain me. Will you give me your prayers? Will you, Mr. Patterson, ask my husband to ever pray for me? He is a Christian, and so are you. Perhaps your prayers with mine may be heard and I may be forgiven. Will you and he sometimes pray together for me? I do need such prayers. And perhaps for the love he once bore his erring wife, he will pray for me. He did pray for and with me before I left him, and perhaps if you ask him he will continue that prayer. I know that he loathes me now; but I pray that he will forgive me, for it is Christlike to forgive, and he is good. Oh, Mr. Patterson, I have wronged him. I can not tell you how I was led on so, step by step, from all that was right and good. I can only say that I have so deeply sinned, I fear I shall never be forgiven, and I can only hope and pray without ceasing. Do you and Mr. Burch pray for me. I can ask the prayers of none others, and though I have so sinned against him, I believe he will pray for me, and you know "the fervent prayer of the righteous man availeth much." At times, so great is my faith in God's promises, I feel that I shall be saved—shall be forgiven—for he says those who truly repent shall be saved, and he knows how earnestly I repent of my sins. And, Mr. Patterson, will you comfort my dear husband. I do pray for him and those dear children. God only knows and has witnessed my agony when thinking of and praying for my loved ones. Oh! the thought that my husband, who once so fondly loved me, now looks upon me with loathing and hatred, is almost unbearable. But I pray God that his heart may be more softened toward me; that he will feel less anger and more pity, and that he too will forgive the great wrong I have done him. I hope you will sometimes see my dear children. They will never know how I love

them, how I pray for them. My heart aches to think I may never see them again. And yet Mr. Burch has promised that I should, and I believe him.

Again, will you pray for me? Will you ask Mr. Burch to pray for me? Your joint prayers with mine may be answered. Will you write me as soon as you can conveniently? Inclose the letter in an envelope to Mr. Corning, Albany.

Your friend,

M. W. BURCH.

MR. BECKWITH'S OPENING FOR THE DEFENSE.

Mr. Beckwith commenced by saying that he had an important duty to perform in stating the case for the defendant. He did not believe that half of the lady's wrongs could be told; none but herself and her God were conscious of the utter desolation of her home for years. The issue was whether the lady had been unfaithful to her marriage vows. The issue was made up by the bill and the answer. The bill charged her with adultery with Mr. Stuart, and secondly with another person in Guilford, Conn. The question of any guilt with Mr. Boyd was not before them. In arriving at the value of the circumstances and confession alluded to, it was important that they should be aware of the manner in which the confessions were wrung from her—under the most solemn assurances that they should never be made known. No evidence would be needed to satisfy them of the utter worthlessness of the testimony. It would be necessary for him to recapitulate some of the circumstances of the married life of the parties. At the time of her marriage, the defendant was 20 years of age, the idol of the family where she lived, her husband a man of mature years. His manner of seeking her hand was disreputable among all gentlemen. Having been refused by her natural protector, he sought her hand secretly, and deeming it finally for her best happiness, her friends assented to her marriage and provided for her liberally. What was the moving spring of the complainant in seeking this clandestine marriage? He would show, if allowed, that it was not love and affection, but mercenary motives. That most unholy passion grew upon him until money became his god. The extinguishment of the little love and affection that he had gave rise to other passions—pride, vanity, hypocrisy and jealousy took the place of love. Difficulties and unkind feelings grew up between the complainant and some of the business partners of Mr. Corning. The covetousness of the complainant made him feel bitter, harsh and unkind toward the relatives of his wife, and those feelings were heaped upon the head of the unfortunate wife. Doubtless he was prospered in business. How much that was to be attributed to the kindness of the

friends of the lady lavished upon Mr. Burch, it was not for him to say. They were always ready to aid him. These passions had extinguished the affection of the plaintiff for his wife. The man was governed by pride, vanity, hypocrisy and jealousy. He made display to the public that everything was going on in the most happy manner in his splendid house, and yet at that time his wife suffered from his unkind words, being frequently obliged to leave his table. Mr. Burch introduced Mr. Stuart to his wife. He would not say that the plaintiff thought of the deposit of the Illinois Central Railway, of which Mr. Stuart was attorney, when he introduced Mr. Stuart to his wife. But Mr. Burch not only gave his business to Mr. Stuart, but induced others to give him business. He induced his wife to believe that Stuart was his most particular friend, but still they saw the jealousy of the man. While inviting Stuart to his house, he was infusing suspicion of his wife in the minds of his servants, leading them to suspect their mistress.

He did not attribute this to a plan at that time to get rid of his wife, but to the green-eyed monster; still Stuart was kept there, as his particular friend. About that time a young lady came there —and the affection which ought to be centered on his wife was transferred to another. They would endeavor to show that by numerous acts of familiarity, acts of great imprudence on numerous occasions, and at various times, at his own house, he had thus not only forgotten his wife, but transferred his attentions to another!

Mrs. Burch discovered that her husband was not pleased with Mr. Boyd's attentions to her, and she immediately told him in a letter that she had done wrong in receiving the attentions of Boyd, and asking his pardon. What did Mr. Burch do? A coward himself, he had not the courage to drive Boyd out of town, but put the duty upon his feeble little wife, whom he compelled to write insulting letters to compel Boyd to leave. There were two letters thus compelled. The last accused Boyd of having seduced Mrs. Burch, and Mr. Boyd indignantly denied the charge, and demanded to deny it in the presence of the husband, little dreaming that the letter had been dictated by Mr. Burch. But it was admitted that at this time Mr. Burch did not suspect the fidelity of his wife. They now arrived at a time when Mr. Burch formed a settled purpose to get rid of his wife. Mr. Burch learned that Mr. Farnam, a neighbor, had called at his house during the visit of Mr. Stuart, and was denied admission by the servant, who said what she knew was a lie, that Mrs. Burch was up stairs. And after the servant had denied Mr. Farnam admittance, Mrs. Burch reproved her, say-

ing, "You know I am always at home to Mr. Farnam." Mr. Burch heard of this denial of Mr. Farnam's admission during the presence of Mr. Stuart, and thereupon confined his wife in the strangers' room, and, after locking the doors, and denying her the access of her friends, obtained the confession in his own language, "by that most difficult of all processes—cross-examination—and the affectation of more knowledge than he possessed, and such other influence as, under God, he was able to bring to bear," and he impiously claimed that God thus worked in and through him in obtaining this confession. He had solemnly promised not to use the confession, and on another occasion he had said he obtained the confession by his fist shaken in her face, telling her to sign it.

Mrs. Burch was sent away on Wednesday evening. Her name was ignominiously rubbed off her trunk, and yet, in the midst of his overwhelming affliction, he gets his wife to sign a deed waiving her rights of property. Money seemed to stick out even then. A bill is prepared, and service is made of an application for divorce. The most she could say to her mother was: "Mother, Mr. Burch has made me sign a lie to ruin me." And, while the woman was so crazed and bereft of peace, she sat down and wrote to the partner of her husband, and one of the alleged confessions was in this letter. Another alleged confession was in a letter to her pastor, in which she reiterated, "pray for me," "pray for me." Another letter, which was put forth as a confession, was to Mrs. Farnam, desiring to discover "a paper having some printing on both sides, and some writing." That letter had been handed over to the husband, and, although he had not seen it, he did not believe it would show the slightest criminality. As to the alleged confession in a letter to Mrs. Thomas Burch, Mrs. Burch could not recollect the contents, and he did not believe there would be an iota of proof against Mrs. Burch in it. Mr. Burch not only obtained one confession of his wife, at the time she went away, but made her sign another paper at the same moment, contradicting herself.

What were the suspicious circumstances against Mrs. Burch? The gardener was called to testify to the presence of Stuart at the house on the occasion of the unpacking of the clock. He said Stuart was there when he shut up the house, and he recollected that he went to sleep at half-past eleven, and that Stuart was there five or six nights after that up to the time he went to sleep. They would show by direct proof that at the time when the box containing the clock arrived, Stuart was not there; that Stuart was sick eight or nine days after the arrival of the clock, and its opening at Mr. Burch's house. This was the time

when the witness recollects when he went to sleep and heard the outside door bolt, up three pair of stairs, through several doors! Mr. Burch knew that the statement of his man-of-all-work was a lie.

As to the other circumstances, he claimed that the prosecution could not show even an imprudence on the part of Mrs. Burch. Since Mr. Burch had deliberately written down that the servants knew nothing, he had been deliberately engaged in poisoning the minds of the servants as to the character of his wife. It would appear by the testimony that Mr. Stuart accompanied Mrs. Burch to a concert, and conversed with her freely during the concert. And yet Mr. Burch gave the ticket to Mr. Stuart, and while Mr. Stuart sat on one side, Mr. Burch, her husband, sat on the other. Mrs. Burch's sister and husband, and Mr. Corning, were also there, and yet that was, perhaps, one of the things that was not to be set aside by itself, but to be saved and weighed with other circumstances as the learned counsel desired. He could show that the testimony as to circumstances was manufactured. When they arrived at the truth they would find that what Mr. Burch said was true—he had no proof except her confessions. While Mr. Burch claimed that he had "loved his wife as a man never loved," it would be shown that he had insulted her in his own house, heaped indignities upon her so as to cause her to leave her own table frequently, and still he hypocritically said, "I have loved her ardently as man never loved before."

It has been said that the punishment was less severe now than of old. But there *was no death worse than that of social death*, and that question they were requested to try as a question of property. Her little remaining years were of but slight consequence. There were higher consequences to her than that—she had two dear children. The verdict of the jury would either clear her children's reputation, or stain them for life. He asked the jury to try the case as they would have their own children's case tried; not to stamp infamy upon those children without their duty most imperatively required it.

POSITIVE EVIDENCE.

David Stuart (*one of the best witnesses ever sworn in any case*), came into court in an evidently nervous state of feeling; his manner was wandering and excited, his eye restless and his motions generally uneasy; but before he departed he resumed his wonted self-possession, his graceful bearing and polished manner, and left the stand with the triumphant air of victorious virtue.

Mr. Stuart was about forty-five years of age, with silvery locks, and a bushy beard of greyish hue; height about five feet ten, weight about 180 pounds; shoulders broad, form erect and manly, movements easy and graceful, and general appearance thát of a man of excellent acquaintance with the world—and with himself. His high cheek bones, or overhanging brows seem to imbed his keen eye—but his glance has none of the snakish look of most deep sunken eyes—with a firmly set mouth and classic nose, his features present a determined front that somewhat belies the sweet tones of his musical voice—such a persuasive, convincing voice, that one could hardly wonder that Mrs. Burch, Miss Fannie Burch, and Miss Spaulding should have pronounced it "fascinating." His prominent legal position—his known reputation for eloquence as a pleader at the bar—his Congressional experience, and his extensive intercourse with men of mark, gave him an effective address that excellent conversational powers in no way impair. A perfect gentleman in manners, educated, cultivated, good-natured and polite, he seemed, to the most superficial observer, to be well calculated to win the affections of an appreciative woman.

Mr. Stuart's eye kept wandering toward the door, where Mrs. Burch was soon to enter, and when she did enter he rose to make room for her to pass, bowing lowly as he did so. Mrs. Burch met him with a glance of recognition; one could detect a shade of embarrassment in both. She passed on to her accustomed seat, and he resumed his uneasy position—toying with his watch-chain, stroking his beard, and otherwise nervously behaving himself. It was a scene of interest—the alleged criminals within a few feet of the alleged injured husband, about to be confronted. And when Mr. Beckwith, with his usual imperturbility, said, "Mr. Stuart will take the stand," the crowded room seemed held in breathless suspense. Every eye watched him as he took the oath, and then turned to give his testimony, facing Mrs. Burch, who sat only fifteen feet distant.

For four hours Mr. Stuart answered the interrogatories as to his intimacy with the Burch family, explaining all the incidents that had been alluded to by other witnesses, minutely detailing the circumstances of his *alibis* on the days specifically mentioned in the confession of Mrs. Burch, as having been the occasions of his criminal intercourse. The only tremor in his voice was when he was asked the direct question as to whether he was guilty of the crime charged, and then there was a sublime grace in the manner in which he raised his hand and upturned his face, replying: "*Never—never, so help me God, nor any act that ever approached*

anything like it." This he uttered with a solemnity and impressiveness that commanded universal silence.

His dignified and polished bearing throughout the whole examination, his chaste language, earnest manner, plausible explanations, and apparently spontaneous as well as prompt answers to all questions, seemed to impress all, while the solemnity of his allusions to the sickness of Mrs. Burch's brother, and her devotion to him until death, drew tears from many a manly eye. It was at this point in his testimony only that Mrs. Burch withdrew from him her earnest gaze, and then her eyes were suffused with tears—tears that were with difficulty suppressed when questions were asked involving her honor or her shame.

This closed the evidence.

ARGUMENT OF MR. BECKWITH.

Mr. Beckwith commenced by saying there was no duty in life affording so much pleasure as that of defending the innocent. It was with peculiar pleasure that he appeared to defend not only an innocent woman, but her innocent children, her aged mother and her relatives. He did not say that this lady had not done wrong—that she had not grievously wronged her husband. But he would say that she had not committed adultery. He would call attention to her own statement on oath. After recapitulating the intercourse with Boyd, she herself says that she had wronged and injured her husband by receiving attentions from gentlemen other than himself, but she hoped and believed, up to the time of the reception of the letter from Valentine, that she would be forgiven. But though it was a subject of the deepest humility on her part, it was no evidence that she had committed adultery. She asked that this foul stain should not be put upon her. He regretted that the learned counsel had not told the whole truth in complaining of vile aspersions on the complainant.

They were asked to believe that, at a time when there was death in Mrs. Burch's own house and the house of her relatives, she had been guilty of crime; when she was prostrated and worn out, her own brother dead in the house, her sister's child at the point of death. That was the time that she was charged with criminal conduct. It was not only cruel, but brutal and inhuman. He would ask them whether it was reasonable to believe that this lady was guilty at any time yet alluded to.

What led to the rupture of this family? On Wednesday morning Mrs. Burch, after her husband had spoken to her about meet-

ing Boyd, and before the meeting in the library, writes a note to her husband, telling him that she had done wrong. The most we have of the interview in the library is that "mother was sitting on father's lap, and both were crying." That was when Mr. Burch detailed the whole of her indiscretion to her husband. Margaret heard them on Wednesday night, when she heard Mrs. Burch say, "Oh, no, father; don't, father; no, father—you choke me." There was nothing suspected as to Stuart at that time. The only accusation was Mrs. Burch's intimacy with Boyd, from October, 1859, to January, 1860. What did he do in chiding her for her intimacy with Boyd? Not content with charging her with Boyd, he charges her that her youngest child is an illegitimate child, and that without having the slightest suspicion of Stuart or anybody else. True, she had done wrong, but that was done long after the birth of the child. Was that kind and considerate in him to make that charge? Mrs. Burch was screaming so that she could be heard through those massive doors. Her ejaculations went forth, "No, father; don't, father: it is not so." Fannie Burch would have them believe that they heard the cries, the screams and the groans—but it was Minnie crying. Mrs. Burch had confessed everything in regard to Boyd. She had written to Boyd, requesting him to send, in fact, to her husband everything that he had. But, if Mr. Burch wished to threaten Boyd, why not threaten him himself? Any honorable man would do it himself, and not compel his wife to do it. Burch not only required her to write, but he dictated the letter.

Was a confession extorted under such circumstances of any value? The law in kindness had said that every confession should be free and unconstrained. Yet at this frail lady, that he could hold as a child, he rushes into the room and shakes his fist in her face. Then he says he was "led by light from heaven!" Was it in shaking his fist in her face, or in "affecting more knowledge than he possessed?" The slightest coercion would render a confession of no value. It was not his province to read law to them. Their province was to judge of the facts. They would be instructed by the court that if these confessions were produced by coercion, however slight, they should be disregarded.

ARGUMENT OF MR. FARNSWORTH.

Mr. Farnsworth commenced by commenting upon the importance of the case, in which were involved interests of such magnitude. He regretted the publicity of a trial of this kind, of domestic quarrels and private letters; in any event it was disgraceful—it benefited nobody. But he came to the argument with an

interest in its magnitude. He wished never again to sit in a court-house and witness so much agony as he had witnessed here. They might not give him credit for it, but he told them that he knew he was on the right side. Complaint had been made of the treatment of Mr. Burch and his witnesses, but he should not be deterred from a proper examination of the testimony of the witnesses, and from characterizing the conduct of Mr. Burch as it deserved. Mr. Hoyne's statement that he had been warned to leave town because he engaged in this case, was on a par with Mr. Burch's frightening the witnesses. It seemed that the counsel were walking in trepidation the streets of Chicago, afraid that Corning's money will hire some assassin to leave their bodies by the wayside. If necessary, he would give Mr. Hoyne a bond that Corning should not harm him, and if that would not do, he would get him a body-guard. It was somewhat strange that, while Mr. Hoyne accused the witness Carpenter as a scoundrel, he (Hoyne) was astonished that Carpenter was not his best friend. As to the denunciation of Stuart, the question was, had he told the truth on this stand? And when his character for truth and veracity was proved to be good, the law presumed that he did not suddenly turn round and perjure himself. But, if the prosecution questioned Stuart's truth and veracity, why was it that they had not brought witnesses to attack his reputation in that regard?

The jury were the only judges as to how much the evidence proved. Mr. Hoyne had illustrated the strength of the circumstances by the strands of a rope, one of which was weak, but all combined were strong. But, could they condemn a woman on circumstances, each of which was worthless? How could they determine the value of the whole body of circumstances without weighing each one by itself? As to Mrs. Burch sending delicacies to Stuart, all they knew about it was what Mr. Stuart told them. If the delicacies were not sent through Mrs. Farnam, why did they not prove by Mrs. Farnam that she did not carry them? Mr. Miller had so much admiration for the witness Layton that he followed his peculiar form of speech, "I think he were." He would not have been surprised to hear him say "he sawed him up stairs." Layton commenced his testimony with a lie about the clock; they had proved it to be a lie by the testimony of the expressman as to the time the clock was delivered. The girls contradicted him as to the closing of the house, and it turned out that half the times when he pretended to have heard up three pair of stairs Stuart going out the front door, he was sleeping out in the barn. It would take a great many witnesses like Charles to consign Mrs. Burch to everlasting

infamy. As to the deposition of Margaret being entitled to more credence than her testimony, was it not her testimony on the stand that made the impression? Was it because she was under the influence of Mr. Burch, because he told her she was to stick to her statement, and because she was afraid that she would be poisoned by some one hired with Corning's money? They complained that their witnesses and client were abused, and yet slandered Mr. Corning because he had the nobility to defend his niece.

Mr. Farnsworth continued his reply to Mr. Hoyne. It should be recollected, he said, that on the night that the young ladies came from the East, although Stuart spent the evening with Mrs. Burch, her brother, Horace Turner, was also there, and Mr. Stuart left the house in his company. They were asked to believe that a crime was committed because that was an opportunity, but he detested that prying jealousy that would pick up any trivial act of a man or woman and magnify it into a crime. But put any man in the court-house on the confessional, and make him tell all the occasions when he manifested a liking for any woman not his wife, what would be the result? Miss Fannie Burch testifies that at Mary Kinsey's wedding Stuart and Mrs. Burch sat upon the sofa—well that was horrid. He went to a sociable the other evening, and sat on a sofa with a lady, and his wife was not there! If it was the law of the land that he could not do that, he begged them not to tell his wife. Then Mr. Miller, in that awfully solemn voice, said they played checkers or backgammon with the board on their knees. Backgammon was the parson's game; he had played it in parson's houses, and with ladies with the board on their knees, and never thought about anything but the game. As to Mary Spaulding, her French was no doubt better than her testimony. Was it likely that a lady writing such a card as Miss Spaulding says she found, would leave it on the floor, or that the gentleman who received it would carelessly drop it there, or that if it was dropped, it would not have been swept out by the servant girls who cleaned the room? Mr. Hoyne would have them believe that death itself, sitting on the form of her brother, had no terrors for her, and at that time she was practicing a trick to get her husband out of the room, so that she could have an improper interview with Mr. Stuart. He was astonished that while complaining of their harshness toward Mr. Burch, counsel should have the audacity and heartlessness to press that charge upon a woman already heart-broken. Mr. Stuart's visits did not stop at that time; he visited the house after that, and his visits were visits of condolence. When he was in the room with Mrs. Burch and her child, there

were three others in the room, including Mr. Burch himself. It was out of such contemptible shreds and patches as this that Mr. Hoyne made his rope—it was a rope of sand.

The charge was brought that Stuart was a licentious man, and Miss Fannie let slip from her tongue scandalous stories about respectable ladies. Fannie had an itching ear for scandals, and a precocious taste for it. But Stuart's character was not so bad, if Mr. Burch could say of him, "I have heard these stories, and they are all lies." Mr. Stuart's position as a lawyer of prominence, a member of Congress, and the friend and intimate acquaintance of the most respectable citizens—a man of family, with grown-up daughters—gave him a character. They could not at one bound conclude that Stuart was a corrupt man. It was said that Stuart's testimony was a fine piece of acting; but the counsel would admit that the finest piece of acting was always truest to nature, and felt what he was acting. They must judge by Stuart's acting and manner and words upon the stand whether he took the Word of God, to perjure himself. His testimony struck the counsel for the complainant dumb. He believed Stuart's testimony would remove the last vestige of doubt as to Mrs. Burch's innocence—even from the mind of Mr. Burch himself, if it was not for that infernal will of his—that he "had made this charge and would stick to it."

But, harmonizing the testimony of all the witnesses, they could find a verdict for the defendant—though they could not find a verdict for Mr. Burch without believing that Stuart and Burrill, and Winch and Carpenter, and Long and Peck had committed perjury. As to the confessions being sworn to, they were made under circumstances which could not make them credible, especially since Mrs. Burch, in her answer, had sworn that the statements in the confessions were false.

Talk about the inquisition, said Mr. Farnsworth, I would like to know where you would find a worse inquisition than that castle of Burch's was on that occasion. This dear little woman, with her wan cheek and tearful eye; without friends or consoler; not a soul there sympathizing with her but her little children; compelled to confess—compelled to sign papers and statements for peace! O, what a picture! "O, hasten with your verdict, and vindicate this injured mother."

Mr. Browning spoke eloquently for the defense as follows:

Alluding to the scene in the death room of Mrs Burch's brother, Mr. Browning said: Stuart stood there—by the weeping sister, and while he stood there, the eye of the spy fell upon them. There lay

the brother stark and stiff in the icy embrace of death. Her heart was in the coffin. Her thoughts were busied with her griefs and with the terrible anguish that had overwhelmed her aged and weeping mother. She stood in the very presence of the king of terrors, with the stricken victim before her—and that victim her brother. She stood as it were upon the threshold of God's judgment seat—amid surroundings which would have rebuked and chastened the fiercest lust that ever burned in a Cyprian's bosom. And, at such a time as this, and in such circumstances as this, the husband to whom she had given her maiden love—who had enjoyed her youthful charms—and become the father of her children—he charges her with lewd and lustful communication with the man he would now have you believe had already debauched her. Oh, gentlemen, it is fearful—how the brain grows giddy, how the heart grows faint from these horrible details—how strong men sicken and shrink from the bare recital. What, then, gentlemen, must have been the moaning anguish of this poor, frail, trembling little woman, when for the first time her husband charged upon her the damning deed?

After commenting upon the evidence as to Mr. Burch's having threatened, and choked, and frightened the witnesses, and analyzing the testimony of Boyd—"the silly, brainless coxcomb, with about a handful of the puppy in the mixture," Mr. Browning came to the time of the alleged discovery of Mrs. Burch's guilt. Mr. Burch, he said, commenced the case with a lie. He told his wife that he knew of things going on in the house which he knew she did not know he knew. If that was the fact, why had he not warned his wife? The fact was, there was nothing going on, and he knew there was nothing going on.

In the very first interview of Mr. Burch with his wife, after he had got the dates, Fannie hears Mrs. Burch say, "Father, I am not guilty." The first words that rang through the house, when he first tried to make her give him a confession of guilt which he himself had written, was, "Father, I am not guilty." Fannie says when he came out he was "pale, excited, exhausted." What exhausted him? It was his physical efforts to extort from her, by "thrusting his clenched fist in her face," and saying, "you shall confess" that full catalogue of crimes. All that was heard during these interviews between Mr. Burch and his wife, was the protestations of Mrs. Burch, and her exclamations protesting her innocence, that was all that was heard, though Miss Fannie does testify to some things that she says Mrs. Burch told her.

Mr. Browning reviewed at length the scenes in Mr. Burch's house during the Monday and Tuesday when the alleged confessions

were obtained, commenting upon Mr. Burch's promises that his wife should stay until her uncle came, and that nobody but himself should ever see the confessions which she made. Mr. Burch had put it in his own handwriting, that he had obtained this confession by pretending that he had more knowledge than he possessed; that he had the knowledge of her guilt, and that there was no need of her denying it. Oh! the miserable delusion that so works in and through us, to utter a lie for any purpose. But she denied her guilt a hundred times, as he says; she would not do it, but he lied—he basely lied to her—and she signed them—she had written one and torn it up; and Tuesday night, after they had got from her what they supposed was the incontestable evidence of her guilt, though they knew she was not guilty, she ran to Margaret's room, and frantically snatched her child, and said, "Oh Margaret, I must go away to-morrow;" and Mr. Burch followed her and took Minnie away from her, and dragged her to his room and shut the door. Was there ever brutality like that? And when she came to his room that night to see her child for the last time, he said, "Go away—I can't endure it." But she could endure it. And Mr. Burch had come to them and asked them—men with hearts in their bosoms—to give a verdict that should indorse such brutal conduct. God pity the women of this land, if such verdicts were to be rendered.

If the testimony of Miss Fannie Burch was to be believed, Mrs. Burch was wild, maniacal. It was almost idiotic—it was the drivelling of an infant for a woman under such circumstances to say "shall I take this gray wrapper—it will be so pretty when I am sick?"

It was enough to make the blood run cold and icy in one's veins to hear the recital of the incomprehensible coldness and brutality. The sound of his wife's footsteps had hardly died away from his doorstep, when he goes to the servant and insults her by asking, "How much money did Stuart give you?" and that, too, in a moment that would have overwhelmed any other man on God's earth with sorrow and grief, and bowed him down with grief.

Mr. Burch, of all men, ought to desire a verdict of "not guilty" at your hands; of all men he ought most to rejoice at the verdict that would wipe out the foul stain from the mother of his children, and that will enable them to go over the world with an occasional gleam of sunlight to illumine their pathway—not followed through all their weary pilgrimage here with the overshadowing of a mother's infamy and disgrace. And when he comes to his last hour—reposes upon his bed of death—and finds himself struggling with

the monster who is too strong for him, to whose assaults he will have to bow—with his last dying breath he will breathe prayers with blessings upon your names for vindicating his wife and children from this foul stain. Gentlemen, I am done. There is the poor, heart-broken, widowed mother, whose grey hairs you bring with sorrow to the grave if you indorse this unrighteous judgment against her suffering daughter. There is the poor, frail, timid, trembling and crushed little woman. I give her into your hands. Take them both. Do with them in that way that you will be able to answer to the great Judge of all hearts when you come to render an account of the deeds that you have done in the body. And if you hope to lay your heads upon the dying pillow in peace, I implore you by all that is sacred to the human heart on earth, not to give your indorsement to this foul, wicked, and most horrible transaction that this country of ours has ever witnessed, and may God in his mercy defend us from ever having to pass through such another ordeal as the trial of this case has been. Gentlemen, I surrender them into your hands—take them and deal with them mercifully as you hope that God will deal with you mercifully hereafter.

CLOSING ARGUMENT OF JOHN VAN ARMAN FOR PLAINTIFF.

Gentlemen of the Jury: The counsel for the defense in this case have assured you in very emphatic terms that they stand here in defense of the innocent. Now, assurances—mere affirmation by counsel—can weigh but little. One thing you will readily believe: Either my client is the most heartless and desperate villain, or the most wronged and oppressed man that ever appeared in a court of justice. He either deserves your warmest sympathies or your deepest execrations. If, as he alleges, his home has been entered by the seducer, and his sacred rights as a husband, his holiest feelings as a parent, invaded and trampled upon, his prospects of domestic happiness blighted and ruined, then he has suffered one of the deepest wrongs that man is capable of suffering or inflicting. And if he cannot ask your sympathy, he may at least demand at your hands that poor justice which the law affords him.

What is this? Gentlemen, you are husbands, you are fathers, you know in all their characteristics, you understand and have experienced, and now feel, the full force of all the relations involved in this case; you have each of you a home; by your own firesides a pattern that shall never fail to teach you what a dutiful, affectionate, and virtuous wife is. And you can, by a moment's reflection, by consulting your own hearts, at once understand and feel the jus-

tice or injustice of this law, which for the violation of chastity should deprive your wives of the rights and privileges, the happy privileges, the invaluable advantages, which they now enjoy. I cannot explain to you why it is that you could not live for one hour with a woman who had violated her marriage vow. If you do not understand it, I cannot make it clearer.

No more can I explain to you many other of the hidden mysteries of the human heart. It is a feeling implanted in the breast of man by that God who created him. Implanted too, before the fall. I beg you to remember that marriage is an institution ordained by the Almighty Himself; it antedates the entrance of sin into the world. It was in the purity of their original state that the Almighty instituted marriage between the first pair. Then it was that he implanted in the one and the other the principle of chastity. I cannot explain it; nor can I explain your love of offspring. I can explain none of these beautiful, sublime, mysterious affections and sympathies which constitute the source of all enjoyment. But you know, you feel, and so do I, that from the hour that our wives should have been proven to us to be guilty of a breach of the marriage vow in the particular of chastity, though our hearts should break, separation must come. Now it must not be supposed that persons bound together by these tender ties, especially where there be children, can separate without scenes of the deepest anguish. You, sir, I ask you, imagine for a moment that between this and the setting of the sun which has now risen, it should become necessary, for a similar cause, to break up that institution around which all your affections, your happiness, and all your feelings now center. I ask if you can imagine it? I ask if the wife of your bosom had betrayed your honor, had trampled upon your rights, if she had treacherously admitted others to the enjoyment of privileges which both God and the law had made proper to yourself alone—I ask you, if all this had been proved, would it not carry to your heart the deepest anguish to separate from her? And yet you must do it; it is inevitable.

What is the proof in this case that relates to that subject? It is plain, it is simple, it is conclusive; it cover the whole ground and explains to you every step of the whole process. And when that proof is considered, you see the whole transaction perfectly reproduced. It has so happened that by the examination of the witnesses who were present in that house from the time that this investigation first commenced—on the Tuesday of the week before Mrs. Burch left Mr. Burch's house down to her final departure—you see every single event of that most painful domestic tragedy fully

reproduced before you. You see every step taken by the husband, you can almost hear the throbs of the heart, you can almost fancy that you hear the sighs and sobs of anguish that resounded through those palatial halls. It was a touching spectacle. It was a most moving scene, and it has furnished the subject for the most pathetic declamations. In the whole history of law trials, perhaps there has never occurred scenes so well adapted to move the heart, to moisten the eye of any man of sensibility, as those which occurred in that house. And well have these gentlemen done to avail themselves of those pathetic scenes to draw your attention from the facts in the case.

Most adroitly and artfully have they wrought upon your feelings until they had in some degree blunted your judgment and silenced your understandings. I have a different task. I shall ask you to regard the grief, sorrow and sufferings of that week as the natural and legitimate consequences of the crime which had been committed. I shall ask you to consider them precisely as scenes that must always occur when this institution around which cluster the fondest hopes of man, the dearest and most sacred feelings of the heart, is prostrated and overthrown. It may never in all time happen, no matter whether the house in which it occurs is the humble cabin on the frontier, or the proud residence of some wealthy aristocrat of your cities—without these scenes of sorrow whenever for any cause the ties that bind parents and child, husband and wife, are suddenly and violently sundered, until the motives of the human heart are changed, until the sublime and gushing feelings of affection which unite families shall be succeeded by the cold precepts of stoical philosophy, scenes precisely such as have been so pathetically described to you by counsel upon the other side. I shall therefore ask you to look upon these scenes as the legitimate consequences of the separation, the painful separation, which had become necessary between these parties. They prove nothing in reference to the truth of the charges. I ask, gentlemen, do they in reason suppose this woman to be guilty? Would her grief on her separation from her children, on leaving her home, on bidding adieu to all the scenes which had given her pleasure for so many years, been less than if she were innocent? Would a guilty woman's anguish be less on account of her guilt? I ask you, as men of sense and of reason, what have the scenes of anguish that occurred in that house to do with the real merit and truth of this case? And why have the counsel labored through long hours to paint you these scenes? For the plainest purpose imaginable—in the hope that by them to touch Mr. Burch.

There is a great choice in men, or things calling themselves men. But of all the things that I have been called upon and compelled to class as human, that Boyd is certainly the most contemptible, in moral character, personal appearance, and everything that makes him up the puppy and coxcomb that he is. That Mr. Burch should feel nettled and annoyed I am not at all surprised. You and I would have felt the same. For it was not one instance only. You will recollect that this intimacy had been going on for three months most furiously. Boyd had been at that house night and day; he had met Mrs. Burch in all manner of places, and it had not escaped Mr. Burch's notice. And here he was with her again—"her usual escort." And Mr. Burch undoubtedly thought when he went home that he would put a final stop to it. He says to his wife, "Madam, where have you been to-day?" She answers, "I have been to such a place." "Whom have you seen?" "I have seen such and such and such a person"—mentioning every one she has seen, says the witness, except Boyd. Mr. Burch said, "As I came home to dinner to-day, a friend told me he had seen you pass with your usual escort." "Oh, yes, yes," she says, "Mr. Boyd did accompany me home. I forgot that, father." Now observe, on her way home, after she had parted with Boyd within a few minutes before that, she had told Fannie not to mention the fact that she had been with Boyd. Mark what follows: Mr. Burch says little; but his appearance indicates that he is not quite satisfied. The denial, and the forced confession led him to suspect treachery there. For the first time, perhaps, in the whole course of his twelve years of married life, the unwelcome and painful suspicion passed athwart his mind like a lurid flash across the clear sky, that his wife was cheating him in the dearest possible respect. He says little; it is not a feeling to be expressed. But it is one to be remembered, if you shall ever experience that sentiment in reference to your wife, down to the hour when your heart ceases to beat; you will never forget it. Suspect the innocence and frankness of the woman that has lain upon your breast for twelve years; the woman who has shared your deepest sentiments, your closest feeling; the mother of your children; her in whom your very soul is garnered up—compelled to suspect her! And suspicion is always more terrible than absolute certainty. Mr. Burch was silent; well he might be. The knell of his domestic peace was struck, when that suspicion entered his mind. When I have just cause to suspect my wife, gentlemen of the jury, our days of happiness are numbered; our days of wedded life will soon pass by.

She did deny it a hundred times. Mr. Burch told Pruyn in his

letter that she had told him a thousand lies. Would you expect that she would admit it upon the first suggestion? Why attempt to conceal a crime at all, if, upon the first suggestion, it is confessed? Is it in human nature freely to confess such things? The force of confessions is based upon the fact that criminals are unwilling to confess. It is because they are unwilling to confess and prone to deny it, that a confession, when obtained, comes with a redoubled force. Is not that the reasoning, the common sense of it? Well, a struggle, and gentlemen describe that aright; a struggle of moral force is used for an hour, in which the piercing eye of a truthful man looked into the soul of that woman, with the fixed purpose of seeing there the foul secrets concealed. He faced her then sternly; he says to her, "Madam, we have had enough of this prevarication; I must know my fate; you are guilty or innocent, and I must know which; my very life depends upon the termination of this uncertainty; I must know, and you must tell me."

Gentlemen of the jury, this was a natural struggle, a struggle which a man investigating a fact, armed with a strong purpose, always meets. It is not in the guilty heart of a criminal ever for a long time to withstand a direct and positive accusation, especially when supported by circumstantial evidence. And it is a peculiarity of guilt that when you suggest to the guilty ones a circumstance that lies near their guilt, they at once, by associations, believe that you know the guilt. Suppose a man to have been guilty of murder at a given place. You meet him and mention that place, as was the case in an instance in New York a year or two ago, and I cannot better illustrate than by a circumstance. A man in some distant country had committed the crime of murder. He was a sea captain. Some time afterward he was met in New York by an old acquaintance, a man who knew of the murder, and who also knew the perpetrator of it. Eyeing him sternly, the man said to him: "Sir, do you know me?" "Yes, sir," said he, "were you ever in such a country?" His knees began to shake, his lips to pale, and before he left the spot where he stood he voluntarily confessed the whole crime. Why, it was the power of association. The name of the country suggested the crime, and because the man who addressed him knew that he had been in that country, he thought he knew of the crime.

Take the wife as she was—honored, respected, courted, worshipped, educated, beautiful, refined, apparently endowed with every possible female excellence! Take her there, in her pride of place, how in God's name could she be led on so? Well might the

girl ask that; well may you ask; well may her husband ask; and well may she, poor outcast, now ask, "How was I led on so?" What was her reply? The most natural that could be conceived; and that is one of the evidences of the truth of this relation; its coherency, its naturalness; each part of it appears as the legitimate consequence of the other, and the whole of it forms a chain, a connected series of events, no one of which could be subtracted without destroying the continuity of the whole; and the whole makes up a connection that defies human incredulity. Fannie says to her, "How could you go to the communion-table after all that you have done?" That was a patent question, too. She was a professed Christian. She was a member of the Presbyterian church; a steady attendant upon the ordinances of religion. Well might she ask, "How could you desecrate those sacred symbols devoted to the commemoration of an event so sublime and so momentous—how could you do it?" Hear her answer: "For eighteen months, Fannie, before my return last fall, I thought I had reformed; I thought I had repented."

Mr. Burch is now calm. He may well be calm. He may sit down there in his lordly mansion to survey the ruin of his hopes lying scattered around him, and know to a certainty that, not by his own act, but by the ruffianly intrusion and conduct of another, has that ruin been wrought. I beg you to look at each step in all his conduct; look at it coolly, carefully, dispassionately, in the light of your own experience, and in the light of justice and truth. He resolves that he must separate from that wife. She has confessed her guilt. He has learned from other sources the confirming circumstances, which leaves that guilt beyond all earthly suspicion, and they must separate. Now the counsel on the other side say, "Why in God's name is this thing made public? Why does he not go quietly to work and get a divorce? Why does he not keep it from the knowledge of the public? Why should he publish her shame and his own? Why not let her live as his wife?" Why, gentlemen of the jury, as his wife she is entitled to the custody of those children; as his wife she bears his name; as his wife her shame is his shame; and not only is that so, but you might rest well assured that a woman of the character that he had then proved her to be, a woman that had seduced Boyd and led him on to the gross and indecent improprieties he had committed; who had sinned so deeply and so often with Stuart; who had so wronged and deceived him, her husband, you might well rest assured that on the first convenient opportunity she would have repeated the offense. If Mr. Burch could have felt any confidence in her

reformation ; if he could have felt certain that what she had done would be the last, he might have felt disposed, while he separated from her, to take no steps for a divorce. But I ask you if you have any right to criticise his motive ? Has he not the right to a divorce ? I refer you again to the statute of your state. I ask you if it is not better for the community, better for public and private virtue, better for the purity of private life and the decency of social intercourse, that the wife turned astray, that the wanton wife, regardless of the interests of her children and the honor of her husband, should be lopped off from the family she has disgraced ? Is not that reprobation necessary to the inculcation of virtue and the destruction of vice and licentiousness ? Ought not punishment to follow such an offense, and if it should follow in any case, ought it not in this ? What motive, I ask you, could be placed before a human being for a correct course of living that Mrs. Burch had not ? I ask you to weigh her story, and consider the motives that surround her.

I do not know how you may feel ; I cannot tell what your hearts are. But I have thought, as this painful case was progressing—I have thought of my own wife and my own children. I think I have the usual fortitude of men. I suppose that I could survive to follow that wife to the silent home from which there is no return. I could see the cold sod of the valley lie upon her breast, and survive. I could follow that child, whom I love so well, to the same silent resting-place; but if you call upon me to devote that wife to shame ; if you call upon me to look upon her ignominy and disgrace ; to see her the plaything of a fiend's lust ; to behold her false, ruined, blighted, you call for more than is human; and, I ask you, with what feeling is the husband looked on when it is known that his wife has betrayed his honor ? Do you wish to be the victim of such a feeling, such a sentiment ? Do you wish to see your wife—could you see her—reduced to such a condition ? Well might there be weeping and wailing in that house.

The public are not responsible for your verdict. You are responsible to the parties, to your countrymen, for the just administration of the law; but higher and above all, are you responsible to that Being who is the personification of justice and of right, and who hates a lie and detests iniquity. I feel myself warranted in making these remarks in any case in which similar outside circumstances prevail. I ask no aid from public opinion. I expect nothing from public sympathy. I expect, nay, I desire, that the lady involved in this case shall have all that; not sympathy, natural, human sympathy alone, but that principle of manly honor and chivalry which

I should dread to see extinguished in the human heart, warrant her the public sympathy. But if the lady had been the wife of some humble neighbor of yours, residing here in your midst, and had been guilty of the same thing, or if the same proof had existed against her—had the wife of your neighboring farmers, in the first place, gone to the verge of adultery with one lover, and then, after a two years' intimacy with another lover, carried on by stolen interviews, letters, meetings, sought in the absence of her husband—if, after all that, she had then repeatedly confessed herself guilty of adultery, I submit to you that she could scarcely have appeared before you with the imposing front presented by this defense. For never have I seen, in the course of a long practice, a party appear in court with so high-handed, audacious, aggressive a front. Instead of apologizing for her own conduct, which she must admit to have been almost as reprehensible in any event as actual adultery—conduct which is admitted before you—instead of offering any apology for that, or admitting even the slightest humiliation or contrition on account of it, her counsel have assumed the aggressive, and stand here dealing every species of anathema and insult upon the injured husband. The position of the accused and of the accuser are reversed. They assume the offensive, and in the most high, insulting and haughty terms arraign him, and make him the criminal. Would not a little more humility become them? Would not a lower tone have been more in taste? If your neighbor's wife had been in similar circumstances, how would she have appeared before you? How would it become her and them to appear? But we have no such person here for a defendant, by no means.

> "Plate sin in gold, and the strong lance of justice harmless breaks;
> Clothe it in rags, and the pigmy straw will pierce it."

Doubtless, when the gentleman says he refrained from employing me on account of my friendship for Stuart, charity to me required that he should say this, if he cared for my feelings. But it seems that he could get better counsel than me—so he thought—and so you see he has. And I should not feel very badly if he had said so in plain terms, for I never was so vain as to compare myself with the counsel. It would not have hurt my feelings if he had told the truth, instead of giving a false excuse. These are the facts as they appear here. Why the gentleman should bring them before you is a little mysterious. If he desired some quarrel with me personally I beg to decline. I really have not time; nobody would pay me for it; it would not gratify me in the least. Another thing: now I have a peculiarity about that. I always select my

enemies with just the same careful discrimination that I select my friends. In a friend, I require truth, candor, sincerity, and honor. In an enemy, I want a man of some considerable qualities, I really do, before I can afford time to quarrel with him. I want to be quite sure that he is a man of some measure. And really I do not know enough of the counsel who sought this quarrel with me to be able to put him in either class.

Speaking of Mr. Stuart Mr. Van Arman said:

An honorable, high-minded and chivalrous friendship between a man and woman, no matter that they may not be married, is as harmless as friendship between man and man. No one can be deceived as to the characteristics of such a sentiment. If a man has a sincere admiration for your wife, for her good qualities, how will he manifest it? Will he sneak into your house in your absence every time that after watching your footsteps he finds you are gone? Will he go there and get that wife in a room alone, and sit there hour after hour, excluding all other persons from the room? Will he, in short, by the mode in which he seeks her society, by the mode in which he enjoys that society, manifest the fact that he fears your presence and mine? This was the kind of intimacy that I referred to when I spoke of intimacies indicating a passional, guilty attachment.

This would have been Stuart's story, had he come here and confessed this crime:

"I came to Chicago, a stranger destitute of friends and fortune. Among my earliest patrons and benefactors was the complainant in this case. He gave me employment; he introduced me to his friends; at my own solicitation he introduced me to his wife; he invited me to his house, and there presented me to his children and his guests. I found him in a stately mansion, adorned with all the embellishments of art, and furnished with every appliance of comfort and luxury. I found him happy in the society of his wife, still beautiful, accomplished and attractive; a daughter of tender years, beautiful and affectionate as the heart of a parent could desire, completed the circle of that family, and left nothing for those parents to wish. I was received as an honored guest with the most liberal hospitality. For these substantial favors, for these generous kindnesses, what was my return? Availing myself of the opportunities afforded by the hospitalities thus extended to me, even under the roof to which I had been invited, at the hospitable board where I was sharing the bounty of my friend in the presence

of his child, under his own eye, while partaking of his bounty, I coolly plotted the ruin of his wife. Availing myself of the opportunities afforded by my friend's absence, I stole like a thief at night to his house, and having first secured an intimacy with that wife by the foulest slanders, I instilled a suspicion into her mind against the fidelity of her husband. Then following up the advantage thus gained, I resorted to that most potent weapon of the seducer, flattery, and aided and favored by the frank, generous and confiding temper of my friend, and the natural vanity of my victim, so rapid was my progress that in three months from my entrance into his house, its proud mistress had become the mere slave of my will, and the victim of my lusts. For months after this I continued to receive the most touching evidences of kindness and confidence at the hands of the husband, while I crawled nightly to his house and repeated there the wrong I had before done him. All this time I met him with a smile upon my lips, but it was the smile of Judas betraying his master. Such was my return for his kindness and generosity. I found that house the happy and honored home of the holiest affections, and the tenderest sentiments. As Satan entered the bowers of Eden, so I with the guile of the serpent and the malignity of a fiend, crept within this earthly paradise, and converted it into a den of pollution and infamy."

Dare he make and swear to that confession?

In conclusion, I will add a word only to what I have already said, in regard to your responsibility and mine in this case. I have now in my poor way, and according to the best of my ability discharged mine. The case now remains with you. I know well I entertain no doubt that if you were to listen to the opinions of the public, especially just about here, where so many appliances have been used, which you understand as well as I do; if you are to be guided by them, I can tell you what your verdict will be. All I have to say is, that if this testimony cannot command a verdict from a jury; if the fact of these intimacies continued through two years, as we have proved; if these four written, and four oral confessions, followed by four letters containing confessions equally as strong, making twelve confessions in all, running through the space of ten days, when every possible chance of collusion is excluded, when every influence is denied, when the woman was as free as you or I, when the letters themselves show that her mind was as clear as it ever was in her life, when she expresses in those letters feelings that are perfectly natural to one in her situation, and comprehends clearly both the past and the future; if such evidence cannot prevail, then this statute between such parties cannot be executed.

I have no doubt it can be among the poor and the obscure. But if this proof does not compel you to a verdict for the complainant, then as between the rich and the well born, those who have power and influence, this statute is a nullity, and the public may as well know it.

Mr. Van Arman closed his argument in the case at half past one o'clock, and the court adjourned until half past two. Before the hour of opening, an immense crowd gathered in the court-room, and every available inch of space was filled. After order had been restored, the court gave its instructions to the jury, which occupied until four o'clock, at which hour the jury retired and the immense crowd left the building.

From that time until the jury came in, the village was in an intense state of excitement, and crowds of people gathered in the hotels and upon the streets, anxiously and excitedly canvassing the result.

When it was known that the jury had agreed, the square in front of the court-house was densely packed with a crowd, not a hundredth part of which could gain admission into the building. At half-past five the jury had agreed, and the doors were opened. A perfect tide of humanity flowed up the stairway, many being forced and irresistibly carried up without touching the stairs.

The jury entered the room amid profound stillness, their faces eagerly scanned by the crowd. Every one seemed to hold his breath, and there was a silence almost as of death. The whole agony, hopes and fears of this all-absorbing case were concentrated into a single moment. The parties to the suit were not present. Messrs. Beckwith and Browning of the defense, and Mr. Miller of the prosecution retained their usual places.

The roll of the jury was called. The judge asked the jury if they had agreed upon a verdict. The foreman replied in the affirmative, and handed the verdict to the clerk, who read it, announcing a verdict for the defendant.

The words were hardly out of the mouth of the clerk before a thundering burst of applause broke forth from the audience which shook the court-house from roof to basement. The court rapped upon the bench and the sheriff in vain endeavored to restore quiet by shouting at the top of his voice. Again and again the applause broke forth. Every one was crazy with joy. Mr. Browning burst into tears, and Mr. Beckwith sat like one thunderstruck.

The judge again asked the jury, "Gentlemen, you all find for the defendant?" They answered, simultaneously, "Yes, sir." Again the crowd broke forth in another wild burst of applause.

The verdict was announced to Mrs. Burch by Gilbert C. Davison, Esq., of Albany. She was entirely overcome, and her mother, Mrs. Turner, rushed into her daughter's arms in a flood of tears. A public meeting soon assembled.

After the playing of several airs by the band, the door opened and Mrs. Burch appeared, leaning upon Mr. Beckwith's arm. She was wrapped in shawls and received the crowd one by one, who congratulated her again and again. A large number of ladies visited her, and, unable to control their feelings, could only clasp her in their arms. The congratulations lasted until a late hour, and the crowd then adjourned to New York House, where an impromptu oyster supper was served, and all was joy and hilarity until a late hour in the night. Before the close of the supper, an honorary committee of the first

ladies and gentlemen of the village was appointed to escort Mrs. Burch to Wheaton. She was cheered on her journey and followed by twenty teams.

The news was received in Chicago, with the wildest demonstrations of joy, and spread like wildfire through the streets. Rockets and fireworks were set off from the Tremont House, and bonfires were soon blazing upon the street corners. Every one seemed delirious with joy at this sudden but emphatic indorsement of Mrs. Burch implied in the verdict.

CHIEF JUSTICE RYAN'S ADDRESS.

Delivered before the Law Class of the University of Wisconsin, June, 1880.

"Whether wearing the soft gloves of peace or the bloody gauntlets of war."
RYAN.

Men who combine such force with words, shot like cannon balls, with the hot breath of magnetic thoughts, richly deserve a hearing like that accorded this late eminent advocate. The scarcity of his speeches render their value $25 a volume. This alone should induce a careful perusal of his life and methods here presented. Something of the man is seen in each paragraph reported. To the diligent, it is not enough to know how things ought to be done, but how they are done. What is said of Chief Justice Ryan will add some light to the career of a great word painter and artistic speaker, who was as fearless as he was grand in method and sentiment. Many of his passages are like the clear, sharp sentences of Addison.

Gentlemen of the Law School:

I obey your invitation to address you, on the occasion of your taking your degree in the University, and assuming your place in the profession to which society intrusts the administration of its laws. I salute you members of our ancient and honorable body. I welcome you to no tranquil life, no cultured ease. I welcome you to a calling of incessant labor, high duty and grave responsibility. If our profession be, as I believe, the most honorable, it is also the most arduous, of all secular professions. Duty is the condition of all dignity. * * *

Man gradually acquired the faculty, and saw the value, of organization. In time nations learned to distinguish the three fundamental functions of government, the executive, legislative and judicial; and knew that the separation of these is essential to the freedom of society and its order. And it came to be understood that the freedom and order of society depended hardly less on observance of the law than on certainty of the law. And so, when men differed, according to their intelligence and their interest, in the interpretation and application of the law of God, the legislative function set itself at work to formulate the divine law appointed for man, in codes constituting, in each state, the law of the land. Thus the *lex loci* is the enactment, by each state, for itself, as applicable to the conditions of its own society, of its comprehension of the law given by God to man, in the beginning. This is the philosophy of legislation. This is the authority of municipal law. It does not rest on its own right, but on the right which it reflects. It has the same relation to divine law that moonlight has to sunlight. In a philosophical sense, it is not so much the law as the interpretation of the law. Its moral force rests in the law of God.

And man is not only incompetent in legislation; he is fickle also, as incompetency is apt to be. Through all his boasts there lurks in him a consciousness of failure. This makes him restless. Dissatisfied with the present order, he is more inclined to look to arbitrary change than to seek the principle of wrong in existing law. He often confounds change with progress. He forgets that, if antiquity cannot confirm the old, novelty can lend no sanction to the new. He does not perceive that the old is neither right nor wrong, because it is old; or the new, because it is new. He forgets morality in expediency. He forgoes principle for appearance. He loses sight of the substance in the darkness of the shadow. He overlooks the law of God, or sees it dimly through the mist of social error. Like all blunders, legislation is at once presumptuous and unstable. It is constantly facing problems which it cannot solve. It has constantly to correct mistakes, which it did not foresee. Yet it hesitates little at innovation, and loves arbitrary change. It has been so far little better than a system of experiments, more or less successful, as they have adhered, with greater or less fidelity, to the fundamental authority of God's law.

The administration of the law implies the judicial function. For that only is a government of law, which, to apply the language of Mr. Webster, puts life, liberty and property under judicial protection; proceeds always upon inquiry; hears always before determi-

nation; renders judgment only after trial. Independent of the judicial function, the legislative is impotent, and the executive is despotic. The judicial function implies question and debate. And, in this sense, it includes a bar, trained and skilled in the principles and processes of the law. This is the business of a lifetime, for which society at large has no leisure. And so society has instituted and set apart a body of men, trained to the knowledge and practice of the law, learned in its principles and processes, to interpret the law to society, to guide the business of society under the law, to protect the legal rights of society and its members, to look to the intelligent and faithful course of judicial proceedings, and to stand charged with the holy office of the administration of God's justice among men.

The law is a science. It is no mere trade. It is not the road to wealth. There is, in our society, no branch of business, no mechanic art, which is not a better avenue to riches. Lawyers, indeed, sometimes grow rich in the speculations of the world. Such run the risk of sacrificing their profession to their interest. For law is a jealous mistress, and exacts devotion of heart and life. She often honors her disciple; but, in this country, she rarely enriches him. Great lawyers, not otherwise enriched, always or almost always, die poor. Wealth, too, is a jealous god, and those who worship at its shrine must surrender heart and life to their idol. What we call the learned professions are, therefore, not among the thoroughfares of fortune. It is generally the successful lawyer's lot to spend life in the luxury of refined and elegant poverty. The lawyer, indeed, must live and receive his *quiddam honorarium*. But this is the incident, not the aim, of professional life. The pursuit of the legal profession, for the mere wages of life, is a mistake alike of the means and of the end. It is a total failure of appreciation of the character of the profession.

There go to this ambition, high integrity of character and life; inherent love of truth and right; intense sense of obedience, of subordination to law, because it is law; deep reverence for all authority, human and divine; generous sympathy with man, and profound dependence on God. These we can all command. There should go high intelligence. That we cannot command. But every reasonable degree of intelligence can conquer adequate knowledge, for meritorious service in the profession. The character of a lawyer cannot always gain distinction. That may belong to intellect. But character can always command usefulness. It is best that they go together. But in our profession, character without high intellect, is a greater power for good than intellect without

high character. It is a grievous mistake that it is a profession of craft. Craft is the vice, not the spirit of the profession. Trick is professional prostitution. Falsehood is professional apostacy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty; not success. In it, as elsewhere in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the bench and of the bar.

On the bench, lawyers are charged with a higher grade of function, little more important than their duty at the bar. The bench necessarily depends much upon the bar. A good bar is an essential of a good court. The problems of justice can rarely be safely solved in solitary study. Forensic conflicts give security to the judgment of the law. The world sometimes scolds at the delay and uncertainty of the administration of justice. These are evils essential to our civilization, perhaps to any attainable civilization. But summary judgment is judicial despotism. Impulsive judgment is judicial injustice. The bench symbolizes on earth the throne of divine justice. The judge sitting in judgment on it, as the representative of divine justice, has the most direct subrogation on earth of an attribute of God. In other places in life, the light of intelligence, purity of truth, love of right, firmness of integrity, singleness of purpose, candor of judgment, are relatively essential to high beauty of character. On the bench they are the absolute condition of duty; the condition which only can redeem judges from moral leprosy. When I was younger, I could declaim against the enormity of judicial corruption. I could not now. I have no heart for it. The mere words seem to have a deeper ignominy than the wisest brain and the most fluent tongue could put into other language. The judge who palters with justice, who is swayed by fear, favor, affection or the hope of reward, by personal influence or public opinion, prostitutes the attribute of God, and sells the favor of his Maker as atrociously and blasphemously as Judas did. But the light of God's eternal truth and justice shines on the head of the just judge, and makes it visibly glorious.

Hardly less grave are the duties of the bar. The courts do not see half the service which a practicing lawyer renders to society. In his office, every lawyer is a judge. In matters not litigated, vastly exceeding litigated matters, he decides all questions; and,

failing litigation, his opinions are the actual judgment of the law. He counsels those who resort to him so as to avoid difficulty, solves doubts, removes obstacles, guides affairs according to law, and settles controversies before they grow into lawsuits. It is the office of a lawyer at the bar to discourage, not encourage, litigation. His calm and skilled judgment soothes, if it cannot convince, contentious selfishness and passion. Every good lawyer's office is a court of conciliation.

It is the business of a lawyer to consider well the merits of a controversy, before he takes retainer to litigate it. But once he is retained, hesitation should give place to zeal. In forensic controversies, one of the parties is generally wrong; both may be. But that does not imply that the lawyer's retainer does wrong to the administration of justice. In doubtful cases, it is within neither the duty nor the power of a practicing lawyer to decide. That is for the court. It is only judgment, after litigation, which can settle right. In the selfish controversies of life, a practicing lawyer should generally accept all knowledge as uncertain, all aspects of truth as hypothetical, all opinion as doubtful, until tested by the ordeal of litigation. Even proximate justice is only to be secured, in the forensic contests of interest and feeling, by thorough presentation of both sides; by zealous advocacy of each, as if it were the sure right. The counsel on both sides, within due professional limits, alike serve the cause of truth, alike contribute to the justice of the case. To this end, it is the duty of every retained lawyer to put his faith in his client and his client's cause. The lawyer should believe in his retainer when he takes it; once taken, he should never mistrust nor betray it. The fidelity of our profession is a great moral lesson. Kings may envy and prelates imitate it. It is a shining glory of the bar. The world may frown, friends fall off, children rebel, wife desert or betray; but the client has an adherent whose faith never fails, whose loyalty never wavers, true through good report and through evil report, true to death and to the memory which survives death. It is the wise policy of the law that the lawyer should be the *alter ego* of his client. And legal annals bear a noble monument of justice well administered, to the controversial fidelity of lawyers to their clients, in proceedings everywhere according to the course of the common law.

The bar does not claim to be the Communion of Saints. It only claims to be a noble organization of fallible men, in a fallible society. It concedes that all lawyers sometimes blunder in profes sional service; that many sometimes sin against professional duty; that some are incompetent and some are vicious. But it asserts its

own dignity and integrity, by a greater contempt than the world has for its dunces, by a severer reprobation of its knaves.

Let the dunces pass. As Dogberry says, their talent is the gift of fortune. Society is too full of dunces to spare a contribution to all the learned professions. And the dunces of the world are altogether too respectable and influential a class to be criticised with safety. Indeed, the professional dunce is too mere a negative to be worth separate consideration. It is not so with the knaves. They point professional vices, and a glimpse at them, they are not worth more than a glimpse, will serve for shade in the likeness of the true lawyer.

They are only seen on close inspection. A broad, generous, philosophic view of the profession from without does not notice them. The noble aim of the profession, its character and place in society, its high and holy office, are unaffected by such accidental and incongruous blemishes. See it sweep through the generations, the glorious bar; administering justice; preserving order· not only defending and consolidating the institutions of civiliza tion, but pointing the way and leading the van, in the course of all safe and solid progress; the constituted and faithful guardian, under the law, of all true human liberties. In all free countries the love of right, the broad views, the disciplined mind, the educated skill of the bar, have made it a potent political agent. In this country they made it, in a great degree, the teacher and leader of parties. In the absence of all privileged orders, they made it a virtual power in politics, a *quasi* aristocracy of cultured talent. Think of the great parties and their leaders. Think of the congresses and their great men. Take the lawyers from the leaders and statesmen, and see how sorely thinned the ranks would be. We may boast of our democracy as we will. Organized leadership, an intellectual aristocracy, is essential to a free country. And though others have filled and are filling many great places in the ranks, the American aristocracy of brain is substantially the American bar. So it has been and so it will be. We deprecate party, but party is necessary to free government. For good and for evil, party has done great work in this land. And it will. Old parties seem to be passing away. The grand old party, which I have long loved and served, which I hope I may not survive, seems to have forgotten its principles. The other great party, greater now in power and place, yet with fewer and lesser historical claims to reverence, seems to have out-lived its principles. There is an odor of political decomposition in the air. The spirit seems moving on the face of the waters. New parties are likely to arise. Those of us who have grown old in old

parties, are generally too little pliant to new policies, too true to the past to take new party service. For one, I never will. But you, gentlemen, are young and free. The generation of lawyers to whom I belong, has nearly passed away, and will have no leadership in new parties. That will soon fall to your professional generation. It will soon claim the succession of the aristocracy of intellect. Imitate your forefathers of the bar, the great generation of lawyers which preceded mine, and gave Webster to the bar and Taney to the bench. Play your allotted part, with their courage and ability, and with fidelity to the spirit of our noble profession.

It is said that he that girdeth on his harness should not boast himself, as he that putteth it off. That depends, perhaps, on the conditions under which it is put on and taken off. In the battle of life, we all stumble, we are all maimed. Few, if any, lay down their arms in that battle without sense of failure or defeat. It is fit to lay off that armor, at the call of the trumpet, cheerfully but humbly. It is better for society that the young should put it on joyfully and hopefully at least, if not boastfully, as a bridegroom puts on his wedding garment. I trust that you are so putting on your professional armor; resolute, and full of confidence, that in your day at the bar order shall be preserved, law ameliorated, civilization raised, justice truly administered. I hope that you and your generation of lawyers may play well your part towards these results. I pray that when all of our great profession, you of your generation and we of ours, shall stand in turn before the bar of the great and final Judge, the alpha and omega of all law and all judgment, we may be each found to have so contributed to the administration of justice here, that we may find mercy there. Once more, I welcome you to the Wisconsin Bar. And for a farewell, I wish unto you, in the words of grand old Coke, the gladsome light of jurisprudence, the loveliness of temperance, the stability of fortitude, and the solidity of justice.

AN IDEAL PICTURE OF AN IDEAL JUDGE.

The late Chief Justice E. G. Ryan, whose excellent address is given at length, was one of the most distinguished lawyers of the great Northwest. To use the apt words of Col. W. F. Vilus, of Madison, delivered at a bar meeting, November, 1880, in honor of the great jurist:

That profound and abundant wealth of learning, that eloquent tongue, that massive brain, which, like an exhaustless mine, yielded richer stores the deeper it was tried, while its every product spark-

led with the gleam of priceless value, are gone from men, lost to us and to the state, forever!

A pioneer of civilization to the bar of the West; an advocate fit to cope with any of historic renown; a lawyer and judge of comprehensive and accurate learning, penetrating acumen and wise judgment, the head of the bar and the chief justice of the state; profession and people may well sit down in sackcloth and ashes, lamenting our irreparable loss. "He was a man, take him for all in all, we shall not look upon his like again."

* * * He was, in every respect in which his character and abilities are regarded, an extraordinary man. Every faculty he exerted, every accomplishment he assumed to possess, every passion which moved him, was great, intensely great. He was a giant among men, in soul, intellect and attributes.

It would require his own power and discrimination, his own perfection of speech, truly to represent him. In the hands of such an artist in language, the portrait of his mind and character would be as striking and absorbing in interest as any ever drawn for the gaze and wonder of mankind. But who now shall paint it? I know none who could but him, and, in his death, the subject, the artist and the portrait, are lost together!

It is a fair question whether his wondrous powers as a writer, a speaker and a lawyer, were due in greater degree to the strength of his natural parts or the perfection of his education. Perhaps generally it would be answered, to the former. But certain it is no one was ever more finished by education. Every spoken and every written performance of his life bears the impress of his learning, shines conspicuously with the lustre of his scholarship. His training was chiefly in law and language; in both remarkable for accuracy and finish. And it is especially noteworthy, that he was, in his eminence in both, self-trained. He finished his course in school at seventeen; he was but twenty when he quit his pupilage in law in his native country for the new world. From that time forward his instruction was administered to him by himself, from books and observation of men. His history as we see it, discloses no marked precocity. For six years after his coming to this country, he supported himself by teaching and clerical labor, while he prosecuted his preparations for the profession. He was admitted to the bar at twenty-six, but does not appear to have attracted especial attention to his superior powers until past thirty. He was in his thirty-sixth year when, in the first constitutional convention of the territory, he acquired that acknowledged pre-eminence which he ever after maintained.

To me, his natural parts appear most splendid and valuable for the manner in which they assimilated and profited by knowledge and observation. Every book he read and every hour he passed of life made addition to his powers. He did not merely read and see to add to his store of learning; what he gained was not so much increase of possessions, as increase of power, of the mind. He read much, but never inactively. No book held him in passive submission; he mastered it easily with an acute and analytical grasp. His memory was retentive and exact. * * *

But he was not only rich in the lore of books, he was an accurate observer of men. It has never been my fortune to meet with any who was his equal in ability to analyze character. He read the motives of action, the various faculties and changing characteristics of men, with intuitive ease, and nice justice. This gave peculiar force to his speech when inveigling against the conduct and motives of those he attacked; a feature of his powers which made him not less terrible to his enemies, than the wonder of his hearers, when the occasion demanded or allowed the exhibition.

His course of self-education was not limited, as so commonly the error is made, to mere processes of study. He refined and corrected his ideas by diligent writing, and enlarged their abundance by frequent conversation. They who read with delight the smooth and delicious flow of his composition, who ride at ease of understanding upon the perspicuous current of his expressed thought, clearly informed, without effort of their own save attention, upon abstruse and difficult subjects of distressful doubt, are little fitted to realize the freight of labor which every word carried from his brain. Yet they who know his habit of writing can testify to the painstaking toil with which he criticized and purified every product of his pen. He could, if he would, compose with a rapidity unsurpassed by any; and the hasty labor of his desk he could well trust in competition with the fruit of pains in others. But he was too sincere and ardent a servant and lover of the English language, to imprint her words with haste, or indolent inattention, on a page where they might stand to her and his reproach. To him the legal rule of interpretation was a fact; "Every word has his meaning." He vigorously condemned the debauchery of language which the rapid penny-a-liners of the newspapers have inflicted on our native tongue, and the speech of some, even of our scholars.

So in all his labor of writing, dictionaries were his companions and his friends. He trusted to no one of them, but, surrounded by many, he gathered from the best linguists the perfect hue of intelligence and beauty that belonged to every word he used, and set

it then in happy harmony with its fellows in the finished picture of thought, which his every period became. Such discipline had its reward. His style is his own, strong, clear and beautiful; not wholly without fault, but as worthy of study as Addison's; not always, in his opinions, perfectly judicial, but turning from that path only to bring in gems of beauty by the way. To be able to write as Edward G. Ryan has written, is a crown of glory in letters, a sufficient title to literary renown.

He cultivated conversation, and, as I have thought, not only for its pleasures, but for its benefits to him. Certain it is, he shone in social discourse with a brilliancy not often equalled. In happy hours, when in health and spirits, who more delighted than he? His rapid and easy speech was wise or witty as the time and subject suited, but always sweet in the simplicity and purity of the language he employed. He was ever conspicuous for elegant diction in ordinary speech; nor did the tumult of emotion or passion which sometimes possessed him mar this accomplishment, or lead him to vulgarity. It rather seemed to heighten and intensify his powers, and clothe his expressions with a richer color.

Thus the self-imposed habits and discipline of his entire life finished and perfected all the powers of the man. He met all the points of Bacon's aphorism; reading made him a full man; conference a ready man; and writing an exact man.

Viewing his finished character and faculties, as trained and accomplished by his course of education, and discarding the faults of temperament and want of self-control, which blighted his life, casting up the account on his credit side only, how splendid and magnificent does he appear, the ideal and mirror of professional power and glory!

Founded on such learning, our departed leader could not but be a great lawyer. But his professional powers were not only strong; they shone with splendor. He was a great advocate and a great orator. In many a cause in the forum, upon many a platform before the people, he has exhibited the eloquence and action, which, with their opportunities, would have ranked him among the great names of the world. And though the memory of the advocate be local and generally fades with his generation, he has left in bequest to his professional brethren some such examples of forensic eloquence as they will not "willingly let die."

He came to this great place, as every one should come who is worthy to occupy it. He came in the ripeness of years and experience, after a long life of labor at the bar. He came laden with profound knowledge of the science he was to administer. He came

not from some obscure corner, to sit in judgment on arguments greater than his understanding; he was pushed by no skillful intrigue into a shameful reward for mere party service; but sought and taken from the topmost place of professional leadership, which, by merit, he had worthily won, he came fit to govern and control where for so long he had confessedly led.

He came to the judgment seat with an honorable ambition, as to the crowning glory of a devoted professional life; but he came reverently, with an exalted sense of the responsibilities he assumed, and a noble devotion of all his faculties and strength to the performance of its duties. He came to rest on no pillow of repose, but to toil and build, that he might still higher elevate the court and the law, and exalt justice on earth.

Hon. T. R. Hudd, an eloquent advocate of Green Bay, said of him in his own language from a former lecture in 1862 :

"The defeat of the Democratic party in 1860 has been followed by the revolt of several of the states from the Union, and by the present terrible civil war because it was defeated by a sectional party. *We reprobate that revolt as unnecessary, unjustifiable, unholy!* Devoted to the constitution, we invoke the vengeance of God upon all who raise their sacrilegious hands against it; whether wearing the soft gloves of peace, or the bloody gauntlets of war."

It is not given to all men alike to win the Chevalier Bayard's epitaph the "Knight without fear and without reproach"—our judicial knight could have no fear in the arena of the common law, his armor invulnerable, his lance the most potent in the legal tournay; on this bench, these tributes just delivered, and that shall go into the history of his times, attest with the fidelity of exact truth, from those who were his co-laborers if not peers in the science of the law, the wisdom and foresight, the critical analysis and direct solution of most, apparently to common minds, difficult problems as they came to him affecting the rights of persons and property; the two grand divisions of the faithful lawyer's thought and the upright judge's solicitude to defend the one and preserve intact the other. In all those attributes that went to make the finished umpire, Judge Ryan was "without fear." If the background must show the frailties of his humanity and some reproach mingle with the otherwise masterful career, it shall be remembered of him "more in sorrow than in anger."

"After life's fitful fever
He sleeps well."

How could he be less than a believer in the soul's immortality as he grew from day to day stronger and broader in mind and power to illustrate the soul that so often seemed to speak from those very eyes that read men's faces, as their brilliancy led the aroused senses to straight paths around devious ways? He must have felt the same truth that the teeming womb of earth is hourly proclaiming from expanding seed to luscious fruit of glorious flower—the child but cradled to-day with brain enough to instinctively cling to life's first sweet vantage ground—the mother's breast; like that earth hid for a season seed only to blossom and spring into the world with a brain that can compass all those mighty revelations in art, science, law; that stamp each recurring era of the world's wonderful development as but the working of that spirit of immortality that compels the soul to look at once and in firm belief "from Nature straight up to Nature's God." Could our illustrious jurist do less than believe that the mighty power that shook and rocked his very frame with the earnest emotions of conviction and power to perceive, analyze and formulate, was all the while teaching that

> "Life is but an errand to that magic morn,
> Forever, on the brink of being born;
> The bright to-morrow, cradled in no cloud,
> Beyond the latter pain, beyond the shroud."

Associate Judge COLE said:

Chief Justice Ryan possessed extraordinary intellectual powers as a lawyer and advocate; we presume no one who ever heard him could for a moment doubt. It is no exaggeration to say that he stood, by common consent, for twenty-five years, at the head of the Wisconsin bar, as its brightest ornament and most distinguished advocate. His knowledge of the principles of law in all its branches was at once varied and profound. And he made such a brilliant use of that knowledge in all his great efforts as to secure the high distinction which he attained in his profession.

While I have many times listened with admiration to his arguments in this court, I never had the satisfaction of hearing him address a jury. But I can well understand how the force and fervor of his eloquence would so captivate the judgment, so arouse human sympathy and emotion as to render his influence over a jury well nigh irresistible. His language was always fine, forcible, and often elegant and beautiful. His feelings were strong and susceptible; his temperament ardent; his manner of speaking was always earnest, and sometimes vehement, passionate and highly denunciatory. His power of sarcasm and invective was almost unequalled.

In his practice at the bar he was engaged in the trial of many important civil and criminal causes, and in his management of them he easily established his right to stand in the first rank of his profession. I could readily mention many an argument made by him at the bar of this court since I have occupied a seat upon the bench which seemed to me to be marked with the highest literary ability and excellence, great felicity and elegance of language, wonderful vigor and clearness of logic, all illustrated by a wealth of learning and the most comprehensive discussion and grasp of legal principles.

Hon. James G. Jenkins, of Milwaukee, said:

His mind, aiding to determine great rules of action, has thus been woven into the warp and woof of human society, largely influencing men's business and men's lives. Who may place bounds to his sway? Who may measure the effectiveness of his life? Enough to say that the immortality of his influence is in the line of the immortality of justice.

The life of Judge Ryan was one long struggle—a struggle against himself—a struggle against untoward fortune—a struggle against infirmity which the world knew little of and allowed not for. And so to most men he seemed arrogant and proud, whereas, to those who knew him best, he was, when acquit of infirmity, companionable and considerate.

He possessed none of the arts of the courtier. He would neither bow subservient to power, nor be patient in the presence of wrong and oppression. Like the oak of the forest he could break, but could not bend. Power might crush him—it could not silence him. So he was often the champion of the lowly against the powerful—I think out of abhorrence of the oppressor, rather than from sympathy to the oppressed. He hated the wrong more than he loved the victim of the wrong.

Such a man could never be popular; he never sought to be. He despised the popularity that is run after. He challenged the fame that waits upon grand deeds, upon great intellectual and moral power; in the beautiful language employed by him on a like occasion:

"As a memorial of a life sealed in honor and usefulness by death—and as an instruction to us that we are compassed about with so great a cloud of witnesses to see how we play our parts in the noble profession which is charged with the earthly administration of the justice of God."

If the spirits of the dead, indeed, revisit the scenes of earth; if the departed, indeed, take cognizance of the affairs of time, may we not indulge the hope that the freed spirit of the great judge yet lingers within this accustomed temple. May we not trust to catch from him, speaking to us at least, in this counterfeit presentment of him, some spark of inspiration to aid in the intelligent discharge of duty; to prompt to a better and a nobler life; to advance yet higher the standard of professional honor and professional attainments.

As descriptive of a master advocate's style and language, the following words of J. W. Hinton, Esq., of Milwaukee, with brief quotations from Mr. Ryan's best sentences, are given:

Edward G. Ryan was an intellectual prodigy, a constant, assiduous, untiring reader and student. His memory overflowed with the choicest selections of literary gems. It was not alone his extensive reading, which seemed to have exhausted all literature. It was the singular success with which his mind had digested the vast amount of mental and literary food with which it had been gorged. It was often noticed with what rapidity he would select gem after gem to form these tiaras of beautiful thoughts, and the most elegant diction with which he clothed and adorned his ideas.

Of his great ability as a lawyer, the profundity of his legal learning, his force as an advocate, his brethren of the bench and of the bar will bear their testimony as they may see fit. I trench not upon that ground. His forensic efforts were often masterpieces of true, and genuine, and spontaneous eloquence, overwhelming the juries or audiences to whom they were addressed. His metaphors, his figures of speech, his tropes, the terseness, the saliency and often extremely sententious character of his appeals, rendered them powerful for the moment, if not so lasting or permanent, in persuasive or convincing effects.

While never careless, he was never cautious in his oratory; he was void of cunning. He was not only great as an orator, he was truly grand. He was highly educated, an accomplished, a finished scholar, not only familiar with the rudiments of learning, but complete, almost perfect. Educated, as I have been told he had been, to become a Catholic priest, he was thorough in a singular sense, for nothing had been neglected.

He had the most fiery of temperaments, and a temper scarcely governable, impetuous, rash, nor could he curb it. The temper often conquered the man; at times he could not even soften it. When he was stung, or fancied he was stung, by his adversary, the

temper would instantly burst forth, tempestuous in its tones flaming with a fierceness of language, boiling up like lava from a volcano, seething hot, scorching if not charring, all that it touched.

In those bursts of oratorical anger or rage, there was never a mere incoherent, disconnected raving, nor an instant's hesitation for the want of language to express that anger. But invective, sarcasm, vehement denunciation and withering rebuke, rushed like the torrent of a mountain stream, startling all his listeners. In many of these flights or floods of language, reason seemed to have broken loose from her moorings, the physical became absorbed in the intellectual.

His versatility was wonderful. We may in perfect truth say, "Age could not wither him, or custom stale his infinite variety." He was a literary and mental kaleidoscope, ever changeful, yet every change producing not only variety, but increase of beauty in thought and force of expression, extorting higher degrees of admiration and respect the more frequent were the changes. We often call to mind what Ben Jonson remarked of Lord Bacon, "The fear of every man that heard him was lest he should make an end."

What Lord Brougham said of Grattan may be said of Mr. Ryan: "In the constant stream of a diction replete with epigram and point—a stream on which floated gracefully, because naturally, flowers of various hues—was poured forth the closest reasoning, the most luminous statement, the most persuasive display of all the motives that could influence, and of all the details that could enlighten, an audience.

"Often a different strain was heard, and it was declamatory and vehement—or pity was to be moved, and its pathos was touching as it was simple; or, above all, an adversary sunk in baseness, or covered with crimes, was to be punished or to be destroyed, and a storm of the most terrible invectives raged, with all the blights of sarcasm and the thunders of abuse. The critic, led away for the moment and unable to do more than feel with the audience, could in these cases, even when he came to reflect and to judge, find often nothing to reprehend; seldom in any case more than the excess of epigram, which had yet become so natural to the orator, that his argument and his narrative, and even his sagacious unfolding of principles, seemed spontaneously to clothe themselves in the most pointed terseness and most apt and felicitous antithesis."

Here was a nature, that loved the leap of the torrent, and shrunk from the stillness of the swamp—a nature that revelled in the roar of the tempest, was confused, if not confounded, by the quiet of the

calm. He was an intellectual warrior, a war-god, most glorious when most wounded. Never knowing defeat, always defiant, bounding from every fall, and grappling the more fiercely, as he felt the thrust of his opponent's weapon, the more deeply—death alone could bring resignation or cause him to yield; burning beneath, and ready to burst forth at any instant—those large eyes so full of meaning, so expressive, protruding at times as if they were telescopic, pushed out further than common to sweep the horizon, and to take in view all that could be discerned—the physical frame quivering with the intensity of his feeling, and you may have feared that he was about to be stricken with palsy, his whole body shaking, the rising and falling of the right hand, lips firmly compressed, nostrils distended as if the lungs were drawing in all the air possible for them to hold; preparing, as does the lion to spring upon his prey, for the attack upon his adversary. If on other occasions you had watched him as closely as I have so frequently done, and when you so watched you remembered his great talents, and forgot his foibles—which were those of temper only—you would have seen those protruding eyes suffused with moisture that could not be hidden, and, as you listened to the tender sentiments, welling up from the depth of his heart—for the man scorned deception and hated subterfuge—you would have marvelled, unless you knew him well, as some few, not very many, did know him—you would have wondered, and been surprised, at the perfection of kindness in which he could speak of those with whom he had been so often engaged in the sharpest, closest legal controversy, in which he could not, and knew he did not, gain any credit, and that feeling of respect, excited in you, would have been increased by the perfect candor of the sentiments he uttered.

Behind this brain-power their lay a will-power which has rarely been equalled among the sons of men; an intensity of purpose which no obstacle could arrest, no defeat daunt, and a determination of character which brightened with every encounter and rose freshened from every overthrow. Nothing could stand in the path of his purpose. That grim face never turned aside to catch the fickle murmurs of popular applause. Public opinion had no terrors for him. It should be written over his tomb that "he never played the demagogue." He never flattered the people; he never attempted to deceive them; he never "paltered with them in a double sense;" he never courted and encouraged their errors. On the contrary, on all occasions he attacked their sins, he assailed their prejudices, he outraged all their bigotries; and when they turned upon him and attacked him he marched straight forward, like Gulliver wading

through the fleets of the Lilliputians, dragging his enemies after him.

I give but a small portion here of his words in an impeachment case:

"Here we find men, holding official stations, privy to a well-established fraud and forgery, and we are told the attempt to expose and right the wrong is a dangerous attack upon the independence and co-equality of a sovereign department of the state government. What is popular government worth if these things are to be? What is the condition of public morals in this state if such things are tolerated? It is a grievous reproach upon the whole state, a bitter and terrible reproach, that any man can be found to claim the meanest and lowest office—even that of fence viewer or dog-killer on such frauds as these. Office has no such charms as to counterbalance such contamination. I would rather be the tenant of any cell in any jail of this state than to hold any office—the highest in the gift of its people, the highest in the gift of the world—on such frauds as these. I would rather surrender my citizenship; I would prefer to surrender it voluntarily. But I would surrender it, if there were no other way, but the commission of some crime—not too bad—rather than hold an office by so rotten, or base a title as this. When it comes to pass that office is held on such a basis, it is an insult, a loud and crying insult, to the public morality of the people of the state. What should we say of the moral sense of a people where men and women were permitted to walk naked in the public streets? It is an idea which the decent moral sense of the community will not tolerate. It would be an insult to that sense of decency to attempt such a thing. But it is a greater insult to the moral sense of the people for a man to walk abroad, clothed with the ermine of office, stinking and rotten, and reeking with corruption and foul with vermin like this. If there be a man in the state, outside of those engaged in it, who sympathizes, or is ready to countenance such corruption and fraud, I am ashamed for humanity that it is so. I can conceive to what lengths political madness may carry a man, but I cannot conceive how men can consent to roll in such corruption as this. I would rather be a dog and wear an honest man's collar around my neck than do it."

MATT CARPENTER.

The American lawyers in active practice are familiar with Mr. Carpenter as a statesman and supreme court lawyer. They remember his thrilling sentences in the Senate and on the rostrum ; but his charm as a speaker was before a jury in the defense of some alleged crime; where his massive form, graphic and powerful appeals, his innate fund of illustration, of every conceivable form, rendered his arguments almost irresistible. He was so plain, so clear, so conclusive and persuasive, that the jury would hang enraptured on his words and stories, wondering who could answer his flights of fancy or turns of ingenuity. He was a born, trained, accomplished, successful advocate. He won all cases by tact, clearness and sterling common sense. He never confused his juries, always reasoned with them, to them, and through their own channels of everyday thought. They admired him as a sort of general-in-chief in a court room. He was a mixture of Clay and Webster, with an individuality clearly his own. Tall, strong, commanding, impulsive, full of vital energy, reaching an early prime and an early grave, he has stamped his character upon history in letters bold and indelible.

The tribute to the memory of Senator Matt H. Carpenter, delivered by Hon. G. W. Hazelton, at the special meeting of the Milwaukee Bar, March 2d, 1881, is deemed by those who heard it, one of the best, if not the very best, of all the addresses delivered or things said or written relative to the lamented senator's death.

ADDRESS BY G. W. HAZELTON.

In one of the great commercial marts of the mother country stands a very unique and significant piece of statuary. It is the figure of Lord Nelson, the great admiral, whose early death at his post of duty was mourned with a sincerity and depth of grief seldom observed. The design represents him as just reaching forth to accept the proffered chaplet of victory, when death interposes and the devoted hand is stayed.

The artist's conception is not applicable alone to him for whom it was designed. It fairly symbolizes the gifted and distinguished character who falls in mid-career, just when a reasonable anticipation of still larger triumphs might justly be indulged. There is a poignancy in the grief, a sadness in the tear that falls over the death of such, which we hardly experience when one goes down to his grave in old age, like an ear of corn fully ripe.

When, after years of diligent and patient study, after a succes-

sion of intellectual triumphs, one comes, with mind fully equipped and all his capabilities at their best, to occupy an exalted position in the eye of his fellows while yet in the prime of manhood, it is hard to contemplate his exit from earthly scenes, and when one falls at such a time, he falls to the human sense prematurely, and the grief occasioned by the event is intensified by the thought that death has prevented achievements which might otherwise be fondly anticipated.

But it may justly be said of Mr. Carpenter that he lived long enough to acquire and occupy an assured and recognized position in the front rank of his profession. Said his colleague, in announcing his death, "he was authority in the senate on questions of constitutional law." The force of this commendation may be realized when we reflect that such great lawyers as Edmunds, Thurman, Conkling and Davis were the associates of the deceased. With the discussion and settlement of the important constitutional questions of the last twenty years his name will remain prominently associated.

It is believed that no member of the bar has wielded a more potent influence during these eventful years with the Supreme Court of the United States, or was listened to with greater interest. This was due not only to the care and thoroughness with which he prepared and mastered his cases, but also to his almost unequaled charm of voice and manner at the bar. It was always a pleasure to hear him, no matter what the cause he was arguing. There was a buoyancy and brilliancy about his manner so in contrast with the ordinary methods of discussing dry and difficult questions in the court-room that the attention was at once arrested. On the dryest subject he was never dry. He had a way of saying things that was peculiarly his own, without affecting or seeming to be peculiar. He talked about the points involved in a case and discussed grave and weighty questions of law almost as a bird sings.

Language came to him as from an exhaustless repertory, and he never had to pause for an apt and felicitous expression; indeed, so perfectly fitted was his language to his thought that it seemed born with it, and part of it.

If Mr. Carpenter had genius, it was the genius of speech.

No judge ever went to sleep while he was talking. No one ever seemed tired of listening to him, either in the court-room or on the popular platform.

I remember, many years ago, while Mr. Carpenter was a resident of the interior of the state, of hearing a circuit judge refer, with undisguised enthusiasm, to the fact that he had for the first time

heard Matt. Carpenter address a jury in a cause recently tried in his court, and said he felt sorry when he finished his argument to the jury, and resumed his seat; that he had never listened with such delight to any court-room address.

But no one has a right to attribute Mr. Carpenter's eminence as a jurist to the possession of genius. I do not mean to intimate that he had not rare natural gifts. I mean to say that he worked for his position in the profession, as few students of this or any other generation have done. However it may be with poets or orators, lawyers are not born. The eminence they acquire at the bar, other things approximating equality, is the measure of their diligence in the library, and their devotion to the study and analysis of the principles of jurisprudence.

Hence the failure of so many men in our profession, who leave the college with a reputation for brilliancy and genius. Immediate friends and relatives predict for these young prodigies a brilliant and distinguished career. Their anticipations may be realized, but the probabilities are that the plodding young fellows, who appeared at great disadvantage in the preparative institutions, and were only known as hard students, will at the age of fifty be far in advance of their brilliant associates of twenty years before.

Those who knew Mr. Carpenter best need not be reminded of the thoroughness with which he accepted and acted upon this inexorable law. If anyone doubts his marvelous industry, let him examine the reports of the federal courts and the courts of Wisconsin for the past thirty years. He worked out his results as a juridical student as the artist works out his conception from the quarried marble. He burnt the midnight oil over his cases.

He left no field unexplored which could shed light upon his path, and so with the aid of a mind naturally bright and comprehensive, and a strong physical organization, he pressed his way by the most earnest application and thorough study, step by step to the front rank of a noble but exacting profession.

A few years ago, when some friends asked him to join in an excursion for a week's recreation, he replied that he should not know how to recreate—that he never rested a day, or took a vacation of a day, since admitted to the bar.

He has not left behind him a more diligent, a more devoted student in the profession. The secret of his success at the bar may be inferred from what has already been said, but it will not be deemed improper, I trust, to refer to some of his mental traits. He possessed the ability to grasp the strong points of a case, and great readiness and skill in analyzing and distinguishing, as well as apply-

ing the vital principles or doctrine of cases cited in support of or in opposition to the case under consideration. In this particular he was conspicuous and masterly. His subtle insight, his legal acumen, his ready ingenuity were never displayed to better advantage than when he was seeking to trace a legal deduction, which he desired to establish from a mass of apparently conflicting authorities. In this field I venture to suggest he has left behind him no superior. To the qualities already mentioned should be added the potency of a marvelous personal magnetism, and a wit which seemed to be as much a part of himself as the fragrance is a part of the rose. A wit, moreover, be it said to his credit, as free from malice as it was spontaneous and happy. It was displayed in private conversation, in the court-room, in the senate chamber, and everywhere to the delight of his auditors. It was as sparkling as the choicest wine, and always coined upon the instant.

"Put him out!" shouted a friend of the senator, when some one near the door interrupted the speech he was making with an impertinent inquiry. "No," retorted Carpenter, instantly; "don't put him out; change his drink!"

During the delivery of the so-called "Janesville speech," the effect of which was a matter of some anxiety to Mr. Carpenter, a confusion occurred at the rear of the hall which diverted the attention of the audience for a moment from the speaker. Turning to the chairman with a quizzical expression and an inquiring tone, he said: "Mr. Chairman, I observe some confusion near the door; I have been endeavoring to determine whether it is occasioned by those outside trying to get in, or those inside trying to get out." A moment later he was dashing along on the current of his thought, like a yacht before the wind.

Of Mr. Carpenter's career as a statesman I have not time, nor does this seem the appropriate place to speak, except in the most summary manner. It may, however, be observed that statesmanship never was a study with him, in the sense that jurisprudence was.

When he entered the senate in 1869, at the age of forty-five, he had had no experience of affairs, and had never held an office of any kind except that of district attorney for Rock county. Nor should it be forgotten that during the entire period of his public life he never relinquished his law business, or abated his ardor for, and interest in, his profession.

The marvel is that he has been able, under these conditions, to assume so prominent a part in the debates of the senate, and to

evince so thorough a knowledge of the many important and interesting questions under consideration.

He was a man of broad views, of warm sympathies, and of generous sentiments; and while his public career has been honorable and distinguished, it is no disparagement to him to say that his fame as an eminent lawyer, and a brilliant orator, will outlive his fame as a statesman. To admit that he had faults is only to admit that he was human. Let him who has none point them out.

That his memory will be cherished with unfeigned affection by those who survive him, and that his brilliant achievements at the bar and on the platform will linger in the traditions of this and succeeding generations, it is scarcely necessary to affirm.

His death is an impressive suggestion of the brevity as well as the uncertainty of this mortal life, and recalls with startling vividness the eloquent lines of Gray:

> The boast of heraldry, the pomp of power,
> And all that beauty, all that wealth ere gave,
> Await alike the inevitable hour—
> The paths of glory lead but to the grave.

THE STOKES-FISK CASE.

Tried at New York, October 27, 1873.

The history of this memorable case is clearly given in the notes of the court reporter herewith appended. The special appeals and new trials afford abundant instruction in the finer points of practice employed, where means are not lacking to press a defense to its final conclusion. This whole trial is dense with rare passages. The ability of counsel is best shown by their success, which in this case seems remarkable. Trial after trial is secured, and victory after victory obtained.

The highest talent of the New York bar was engaged in the investigation of this well-known tragedy. Men of national reputation, like Mr. Tremain, whose wit and logic, eloquence and consummate skill need no introduction to add force to their reasons or attraction to their eloquence. Few men combined such a diversity of talent, such a commanding person, and such conspicuous determination as the author of the argument here reported. It is

powerful, pathetic, and at times sublime. It touches the keys of passion and reason, and appeals to the noblest impulses. It should be read three times by every advocate in America. It is a fitting climax of a brilliant advocate's successful career in modern jury trials. Its author passed to his reward, soon after this signal victory. He has gone to meet the impartial Judge of whom he often spoke most eloquently—where masks are all removed—where others of that grand, heroic type of orators have gone before—and his stirring words in defense of Stokes are as a voice from the grave and worthy of a place in the lasting remembrance of that language which moves and molds the minds of men—which originates ideas, which lift us out of ourselves and into the realms of reason—which cuts the knots of legal problems—which chisels away the flinty marble and leaves a life-like figure in bold relief. This speech is a monument to a lawyer's labor and industry. It is more than that; it is an inspiration from the highest source of oratory. It is authority as to style and finish of the art of all arts—eloquence. It is a struggle of a great man in the act of rescuing a human life, and whatever may be said of the guilt or innocence of Stokes, the defense based on *four separate grounds*, was ably sustained on each. The plea of insanity was but one of the columns of the mighty structure; others were also strong. In the study of oratory, so much neglected of late, the design of this massive argument is mentioned as a model for imitation.

[To the kindness of Hon. R. W. Peckham, of Albany, I am indebted for the pamphlet report to make the extracts of this masterly argument, which, in full, fills one hundred and forty-two pages, necessarily here condensed.]

STATEMENT.

Edward S. Stokes was committed to prison, charged with the murder of James Fisk, jr., on the sixth day of January, 1872. He was speedily indicted by the grand jury on this charge. To this indictment seven special pleas were interposed by his counsel, all attacking the indictment on the ground of the alleged illegal composition of the grand jury, by whom it was found. To six of these pleas the district attorney demurred, and judgment was had for the People on these demurrers. To one plea a traverse was interposed, and the issues thus formed were tried before Mr. Justice Cardozo and a jury. This trial began 12th February, 1872, and was terminated on the second day of March, by a verdict of the jury in favor of the People, rendered under the instructions of the court.

A bill of exceptions was prepared, embracing all the proceedings of this preliminary trial, which, by order of the justice presiding, was made a part of the record in the cause.

S. B. Garvin, then district attorney, appeared for the People, while the prisoner was represented by John Graham, John McKeon, W. O. Bartlett, Elbridge T. Gerry, and Willard Bartlett. After this trial, the same special plea was again interposed, but was stricken out on motion of the People.

The prisoner was then arraigned upon the indictment, and standing mute, a plea of "not guilty" was ordered to be entered, and on the seventeenth of June, 1872, the first trial on the charge of murder was commenced before Mr. Justice Ingraham. Seven days were spent in obtaining a jury, and the case was submitted to them on the thirteenth of July, and on the sixteenth, being unable to agree, they were discharged.

The defense rested practically upon four propositions: (1) The People failed to prove a case of premeditated murder; (2) Upon the case made by the People, it was at most manslaughter in the fourth degree; (3) That the killing was justifiable; (4) That the deceased did not die from the effects of the shots, but from the effects of the medical treatment to which he was subjected.

On the eighteenth day of December, 1872, the prisoner was again placed on trial. Under peremptory instructions from the prisoner, his counsel withheld from the *second trial* all the medical evidence, and the case went to the jury mainly on the single issue thus stated in the opening for him, "our defense is self-defense."

This trial terminated on Saturday night at about 11.30 o'clock, in a verdict of murder in the first degree. And the prisoner was, on the sixth day of January, just two years from the date of the homicide, sentenced to be hanged on the twenty-eighth day of February following.

A motion was soon made, on numerous affidavits, at the same term of the oyer and terminer, to set aside the verdict, and for a new trial on several grounds, viz., newly discovered evidence; misconduct of the jury; absence of the prisoner while trial was in progress; that some of the jurors were incompetent to sit, they having formed and expressed opinions adverse to the prisoner; and absence of the presiding justice while the summing up proceeded. This motion was denied.

A bill of exceptions was prepared, and the motion for a writ of error with a stay argued at great length for the prisoner by Mr. Tremain, before Davis, J., who took time to consider, and then rendered a full opinion, in which he selected as ground for his deci-

sion the alleged error in the charge, which will be hereafter noticed A writ of error, with a stay, was granted. In order that no point in the case might be lost, a motion was then made to compel the clerk to annex the record of "the trial of the grand jury," as it was termed, to the principal record. This was denied.

For the purpose of bringing up the alleged irregularities occurring on the trial, the practice, supposed to be obsolete, of assigning errors in fact was resorted to, and an elaborate assignment of such errors was prepared, in which the defendant in error was required to join within twenty days. Two writs of *certiorari* were also issued, one to bring up the papers used on the motion for a new trial, and on the motion to correct the record, and the other to bring up the record of "the trial of the grand jury," and proper returns obtained. A new motion for a new trial, in substance identical with that made at the oyer and terminer, were also prepared for the general term.

The record, when printed, covered twelve hundred and seventy-eight octavo pages, and was ready for service eight days before the day fixed for the hearing of the case at the general term, viz., 22d April, 1873.

The general term, on motion of the district attorney, struck out the assignment of errors in fact, and denied the motion for a new trial. The principal cause was then argued at length by Benj. K. Phelps, district attorney, and William Fullerton, for the People, and Lyman Tremain, orally, and John R. Dos Passos, on printed brief, for the prisoner, before Brady, Fancher and Davis, JJ., constituting the general term.

On the 7th day of May the general term affirmed the conviction, Brady and Fancher, JJ., rendering opinions, Davis, J., neither concurring nor dissenting, in writing.

By appropriate proceedings the cause was at once carried to the court of appeals, and set for argument for the 26th day of May.

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On the 10th day of June the court of appeals, by a unanimous vote, reversed the conviction, and remitted the cause to the oyer and terminer. Judge Grover concluded the leading opinion with these remarks: "But for errors in rejecting competent evidence offered by the prisoner and in receiving incompetent evidence against him, and in the part of the charge excepted to, the judgment must be reversed and a new trial ordered."

Among the numerous rulings of the court of appeals some are of general importance, viz.: That the new jury law is constitutional; that threats by the deceased against the prisoner, though not com-

municated to him, were admissible, it being alleged by the defense that Fisk was then in the act of assaulting the prisoner.

The portion of the charge on which the stay of proceedings was granted is as follows :

"The fact of the killing in this case being substantially conceded, it becomes the duty of the prisoner here to satisfy you that it was not murder, which the law would imply from the fact of killing under the circumstances, in the absence of explanation that it was manslaughter in the third degree, or justifiable homicide, because, as I have said, the fact of killing being conceded, and the law implying malice from the circumstances of the case, the prosecutor's case is fully and entirely made out, and therefore you can have no reasonable doubt as to that, unless the prisoner shall give evidence sufficient to satisfy you that it was justifiable under the circumstances of the case."

The language of the statute of New York is, that such killing, unless it be manslaughter, excusable or justifiable homicide, shall be murder in the first degree "when perpetrated from a premeditated design to effect the death of the person killed or of any human being."

The court of appeals said : The jury "were virtually instructed that the killing being conceded, they should convict of the crime of murder unless the proofs adduced by the prisoner satisfied them that the circumstances under which the killing took place were such as to justify his act, or reduce the grade of his offense. Though upon the whole evidence they might be in doubt as to what the circumstances really were, the killing being conceded, this charge indicated that it was their duty to convict."

The cause was argued orally by Benj. K. Phelps, district attorney, for the People, and by Lyman Tremain for the prisoner; Mr. Fullerton signed the printed argument for the People, and Mr. Dos Passos and Cephas Brainerd submitted printed arguments for the prisoner.

On the 8th day of October, 1873, the third trial of Edward S. Stokes was commenced. The first day was occupied in the discussion of a challenge to the array, which was sustained on the demurrer of the People. The district attorney then proposed to traverse the challenge, but the counsel for the prisoner having become satisfied by conference with the commissioner of jurors that the challenge was at best but technically sustainable, it was withdrawn.

Since the last trial the legislature had made the court the trier of all challenges. This it was supposed would facilitate the work of obtaining a jury. The panel was completed in five days.

The trial proceeded rapidly, the court opening very early and closing late, and sitting on Saturdays; it terminated October 20th in a verdict of the jury of manslaughter in the third degree, upon which the prisoner was sentenced to four years' imprisonment at hard labor in the state prison.

The grounds of defense on the last trial are clearly stated in the summing up of Mr. Tremain, as also the claims of the People. The case of the People was conducted by Mr. Phelps, district attorney, and Horace Russell, his first assistant; and for the prisoner by Messrs. Tremain, Dos Passos and Brainerd.

The writer of this note had considerable knowledge of the case from the time of the conviction for murder to the end; and he considers it fit to say that the proceedings on the part of the People were conducted by Messrs. Phelps and Russell with a marked courtesy and fairness toward the prisoner and his counsel, which they gratefully appreciated; and with a surpassing industry and consummate ability and skill, which should be, and, in fact, are, a just ground for pride on the part of the citizens of New York in these faithful officers. Of the defense he cannot be expected to speak.

The legal profession has abundant cause for regret that there has never been a full professional account of this cause published. It involved many difficult and obscure questions, was tried with great skill, and a detailed report would be of great value to students in criminal law.

MR. TREMAIN'S SUMMING UP.

After an exhaustive argument on the law of the case, and the prayers for instruction to the jury (forty-six in number), relating to premeditation, intent to kill, hostile relations, temper of Fisk, different degrees of manslaughter, "that the evidence must exclude to a *moral certainty* every hypothesis but of guilt, and be consistent with all the facts to convict." Also, as to wounds and poison, probing, insanity, justifiable homicide, credibility of witnesses, reasonable doubt, etc.

The learned counsel next proceeded to answer the district attorney's opening address, during which a sharp discussion occurred between Mr. Tremain and the court, and developed that signal courage and boldness for which this advocate was so long noted.

He was a giant in frame, although but five feet ten inches in height, very vindictive when roused, and felt his physical force and robust courage. Personally Mr. Tremain was nearly sixty-five, of medium height and strongly built, dark complexion and dark hair;

a large forehead, a smoothly shaven face except an imperial. He was adroit in the management of facts, forcible and ingenious in argument and learned in law.

This was his last great jury trial, and presents a true picture of one of his brilliant efforts as an advocate and counsel. It need scarcely be said that in his prime he was an equal to the brightest of the famous advocates of the New York bar. His manner was kindness itself when well used, but more like the elder Booth or Edwin Forest when crossed or assailed. He had that hot, impetuous manner, and his words were cannon-balls to his enemies. His sentences are of the Websterian order, logical and powerful.

Mr. Tremain's quotations from Cicero are exceedingly apt and rare. He was familiar with oratory as a science, and made a careful study of the style of the prince of Roman orators with whose ripe thoughts his mind was richly stored.

He said:

Gentlemen of the Jury—I propose to divide my argument before you, upon the great and serious charge to which I have referred, the charge of murder in the first degree—a charge that in all ages, and all countries, has been regarded as the most atrocious and wicked that is recognized in the criminal code, except treason—into four general heads:

1. Did the prisoner inflict the mortal wound with the pistol he held in his hand, of which mortal wound James Fisk died?

2. If he did, was the act murder, or manslaughter in one of the lesser degrees? And, in considering this question, I shall leave entirely out of view, the question proved by the oath of the prisoner, as to whether Fisk had a pistol or not. I shall ask you to consider that point in the light of the other evidence in the case, and under this head shall only discuss the question, whether, wholly irrespective of the two next points to which I shall call your attention, you can, under your oaths, and according to your consciences, find a verdict of murder?

3. The third general head which I shall consider is: If the prisoner killed James Fisk, was that killing justifiable homicide?

4. If he killed James Fisk, and that killing was not justifiable homicide, was the prisoner sane or insane, within the meaning of the statute, passed in 1830, and which has remained upon the statute books of the state ever since, in these words: "No person shall be punished for any act committed while in a state of insanity."

First. Did the prisoner inflict a mortal wound, and did the

deceased die of the effects of that mortal wound? You will observe my proposition does not include the question, whether he died from the joint effects of the wound and some other agnecy. There is no such charge in this indictment; it contains but one count, and that count I have already stated to you. And here I affirm and shall endeavor to maintain by argument, a proposition, which of course you will dismiss, except so far as, by solid reasoning, my proposition shall commend itself to your favor. I claim, that upon this corner-stone of the case, the prosecution has entirely failed. Remember, gentlemen, that the burden rests upon the people; remember that the law in its humanity declares, if there is a reasonable doubt in the minds of the jury, not merely upon the whole case,but upon any one branch of it, you are bound by that oath you have registered in Heaven, to pronounce a verdict of not guilty.

The next kindred proposition I shall endeavor to establish in the same connection is, that upon this testimony it is far more probable that the cause of James Fisk's death was the administration of a deadly poison and unskillful treatment, than the proposition to be sustained by the government, that he died from the effects of the mortal wound. It is not incumbent upon me to show clearly that he died of morphia. It is enough that I meet the case, as it is presented by the learned representative of the government. If I establish the fact upon this whole case; if, looking at the medical evidence and the surrounding circumstances, you are not prepared to say, in your very heart of hearts, that sacred depository where the mental operations culminate and come to a conclusion, if you are not able to say beyond a reasonable doubt, that Fisk did die from the morphia, or from the joint effects of the morphia and the wound, or rather if you are not able to say that you are satisfied, beyond all doubt, that he died from the effects of this mortal wound alone, you cannot convict of murder.

The law is, that if the person injured die at any time within one year and a day from the time that the mortal wound was inflicted, the killing may be murder. Therefore, if this wound was a mortal wound, although it did not terminate fatally until one year after it was inflicted, it was murder, just the same as if the killing was instantaneous. If a man, having a mortal wound inflicted upon him that may terminate at some unknown future period within a year and a day, no matter whether it be one hour, twenty-four hours or twelve months afterward, yet, by means of some independent affirmative intervening agency he dies, he does not die of the wound. If even an unskillful physician, by such practices as

would constitute manslaughter under our statute, causes death at the end of one hour, one day, or ten months, an indictment against him for manslaughter would be sustained, if the fact be established that the physician caused the death; and it would be no defense to that physician that the party had a mortal wound from which he would have died. There cannot be two distinct and independent authors of one death, and it is of no sort of consequence, as I shall show you by the law, whether the intervening agency was wilful and intentional, or whether it was with an honest design and desire to save the life. If a physician, honestly designing to save life, employs a deadly drug, and that deadly drug or poison dries up the sources of life and the person suffering either from a mortal wound or from disease dies, it would be a false verdict to say that he died from the effects of the mortal wound. The language of the indictment is plain, simple and easily comprehended. No sophistry of the district attorney, no charge of the judge can mystify it. Did he die of that mortal wound, or did he not?

That brings me, then, to the question presented upon the whole evidence, whether the prosecution has proved that he died from the wound. Remember that the burden rests upon the government; it is not for us to show that he died of poison, nor that he may have died of poison; it is for the prosecution to show that he died from the wound, and that only; and if our testimony has been of such a character as to create a reasonable doubt upon that fundamental ingredient, that corner stone of the case, that essential element of this crime of murder, it is no matter how guilty may have been the prisoner, no matter whether sane or insane, no matter whether acting in self-defense or not, the prosecution has broken down, and however guilty in your hearts you may believe the prisoner to have been of moral crime and of malicious, willful, diabolical intention, yet, in the language of Marshall, the learned and eminent Chief Justice of the United States, when he presided upon the trial of Aaron Burr for treason, and the whole country was ringing with anathemas against the prisoner, who, it was believed, had sought to break in pieces this Union and establish a hostile government on its ruins, of which he should be the chief, Marshall saved him by holding the scales of justice firm and equal as between the prisoner and an infuriated multitude, when he said, in substance, "This man may be guilty, but upon the evidence and the law applicable to it, he cannot be convicted."

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But, gentlemen, we do not rest here. We called upon the stand

Dr. McCready, whose position in his profession may be inferred from the fact that he wrote the article on vegetable poisons published in Beck's Medical Jurisprudence, a work that, for the last fifteen or twenty years, has been regarded as a standard authority in the legal and medical profession; a work edited by Dr. Beck, who resided in the city where I reside, and was the president of the Albany Medical College; a gentleman who has earned a title to the honorable recognition of both professions by his great work, and to the pages of which no tyro, no sophomore, no deputy coroner, appointed by the political authorities of New York, no man, in short, except a man standing in the foremost ranks of his profession would be permitted to contribute. He comes upon the stand, venerable, learned, experienced, free from any influence in favor of the prisoner, no relationships controlling or influencing him, jealous, doubtless, of the honor of that medical profession with which he is identified, having filled many positions, which none but those of great distinction and high eminence in his profession would be permitted to occupy; he narrates to you, with the clearness of a man of intelligence, experience and skill, the progress and symptoms of poisoning by morphia; he endorsed emphatically the medical works which laid upon this table, and with which we might, if necessary, occupy your time in reading; it is enough for me that we read from Taylor on Poisons, a work written by a most eminent English physician and surgeon, showing you that where two grains are administered, within so short a time as the drug was given to Fisk and the patient does not die, it is the exception to the rule. He then proceeded to relate, step by step, the opinions that the profession entertain upon the two great questions involved in this case, first, whether the symptoms indicated shock, continuing down to the time of death, and causing dissolution, or whether the symptoms indicated poisoning by morphia or salt of opium, preceded by the stupor or deadly coma, and resulting finally in death, at the end of about twelve hours from the time when the last dose is administered, that being the ordinary period within which you may expect such a result, though he says death might result at any time within twelve or twenty-four hours; and all this was administered right along, as I have shown you, in this short interval of time, terminating at 10.45, in the evening, and the patient died at eleven the next morning, about twelve hours afterwards.

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We have produced the most eminent physicians and surgeons, who swear they have successfully treated cases of this character

and other cases of a similar character where there were more severe abdominal wounds penetrating the intestines, and in all these cases the patients recovered. We have shown you from medical authorities and from printed records published by official sanction, that such cases do entirely recover. It is fully proved affirmatively that such wounds are not necessarily fatal. We have also clearly demonstrated that such a succession of doses of morphia given within the same short period of time that these were given, would be almost sure to kill, and that even one-eighth of a grain of this deadly drug has killed. The district attorney has not attempted to disprove any one of the cited cases, or any one of these well-known facts. He simply brings other doctors here who testify that in their own particular experience they have not successfully treated their cases, but that all their cases resulted fatally.

Now, the evidence of the government did not show so much what caused the death as it revealed the utter recklessness with which James Fisk was treated, and the apparent indifference shown to the chances of his recovery. How about that probe? Why, every physician and surgeon examined on the point states that the man who passes a probe into the abdominal cavity must be a madman! Marsh, their witness, says it; Wood, their witness, says it; Carnochan and Thompson say that, even though upon a *post-mortem* examination you do not find the evidence of peritonitis at the end of the probe, yet that the use of the probe under such circumstances would be likely to increase the effect of the shock. In the hands of a very skillful man, who knows within a hair's breadth where the line is that separates the adipose matter from the entrance to the abdominal cavity, and is sure not to pass it, such a probe may be used. It is a very delicate instrument, requiring most extraordinary skill in its employment. In this case, we find Dr. Tripler using it, according to the testimony of Curtis, Tripler and White at one time together, and Tripler afterwards alone—in all about seven minutes, he says, according to my recollection of it, when he leaves the room and goes away. Byrne leaves the room with Tripler probing around, and feeling around as if he was searching in some gold mine. How long he continued his probing, God only knows; we shall not be enlightened, for Tripler is not here; the prosecution don't bring him forward; they don't bring Dr. Sayre; this time they don't bring Dr. White, Fisk's family physician, nor Dr. Steele. But he is probing, this Tripler, a hotel doctor, boarding at the house, who catches hold of this case with Dr. Fisher, and takes charge of it to the end; you find him feeling and digging round in Fisk's abdomen until this witness leaves him

there, and whether the probe passed into the abdominal cavity or not is one of those things that nobody can tell us about; and I am afraid, now that Tripler does not come on to the stand, it will never be revealed in this world.

Quiet was necessary, was it not? The only chance of recovery, all the medical gentlemen agree, in such a case, was in the absence of all outside excitement. Who are in the bed-room of this man? William M. Tweed! Jay Gould! Fisk's co-directors, coadjutors, co-political conspirators, co-everything—they are there! White discovers the presence of Tweed, who is a conspicuous man—a very conspicuous man—and White then clears them out as far as he can. The character of Fisk has been detailed here on our side for purposes that are legitimate, and to which I shall hereafter call your attention; but where are Tweed and Gould, and the men who knew him, and who are wanted on this trial to sustain his character? Where are the men who in the days of his prosperity enjoyed his hospitality and gold? Where are the men who shouted as he rode along your streets and touched their hats to the "Prince of Erie;" who bent the knee as he approached, or threw open the doors of the Grand Jury room, or walked arm in arm with him, or perhaps presided in your courts, for he boasted that he could "railroad" my client to "state prison," a boast that implied extraordinary power over the judicial machinery of this city? Where are they? They were there at his bedside—a dozen men, according to White, going in and out of the room. This evinces an entire disregard, on the part of those medical gentlemen, of those precautions and safeguards and of that skillful treatment which James Fisk was entitled to receive; and remember also in this connection that this poison was administered, not as Dr. Wood wanted it administered, but injected hypodermically; whether they kept their fingers upon his pulse, under the advice of Dr. Wood, for the reason as he expressed it, that two lives were involved in the result—the life of Fisk and the life of Stokes—we have no evidence, although all the symptoms and treatment are fully and minutely disclosed in the written memoranda made by Dr. Fisher at the time. There is no evidence that they kept their fingers on his pulse when giving this poison; on the contrary, the indications of the effect of the poison are utterly inconsistent with the presence of any such precaution. The appearance of the heart, the right lobe of the heart, filled with blood on both sides, is proved positively by Dr. Carnochan and by Dr. Shine; the exudation of this watery matter from the brain, is proved by the same two witnesses, for it is not one witness that we rely upon; true we don't find it

noticed in the coroner's notes, of course not; but now it is disclosed, it is laid bare before you. You have the testimony of this array of medical gentlemen on one side; Carnochan, McCready, Thompson, Shine, Leale, and I shall take in Wood, who says the wound was not necessarily mortal, all showing a state of facts that are utterly inconsistent with the theory of the prosecution that James Fisk died from the effects of the wound.

Considering, therefore, the age and constitution of Fisk; considering the strength he displayed immediately after receiving the wound; considering the presence of that clear intelligence which was exhibited at every stage in the history of this case, from four o'clock in the afternoon until coma intervened; considering that the pulse had become natural, the respiration normal, that the physicians discovered the presence of all those welcome symptoms which indicated that the shock had spent its force and nature was resuming her control of this man's case; considering the presence of that stertorous breathing, which is accepted by all the medical witnesses as not only indicating the presence of poison, but absolutely disproving the presence of shock; considering the enormous quantity of this deadly drug which was administered to him subcutaneously and at the mouth within the short space of time we have narrated before you, and that the patient after that continued conscious until about five o'clock in the morning; considering that there was no other cause of death that could possibly produce it, upon the theory that the wound caused it, except the shock, for the peritonitis was a symptom scarcely to be considered here, as Dr. Wood says—the peritonitis being an element in favor of recovery in this case, because it was nature's mode of throwing out the healing remedies and substances that would produce a restoration of health; considering that he passed into a state of coma, not indicative of death by shock, but a sure symptom of fatal poisoning, and that he died at the end of nineteen hours from the time that he received the injury; and then, considering, finally, that the medical testimony entirely overbalances the theory of the prosecution, and not merely upon the facts found, but upon the opinions of gentlemen of the highest standing in the medical profession, it appears this man died, not from the wound, but from the poisoning. I ask you, gentlemen, whether, as conscientious men, not influenced by the prejudices of the hour—for, thank God, I believe I see the silver lining on the cloud, I believe we have at last, after two years of struggle, reached a period when the public mind, that has been desirous of vindicating the laws, but which is liable to be misled by passion and prejudice, will now hail with equal satisfaction the vin-

dication of the innocence of this prisoner by the verdict of twelve honest men not swayed by passion, partiality or prejudice—I ask you whether, upon this testimony, if I went no farther in the argument, you would not be bound to find a verdict of not guilty?

I now proceed to the discussion of the second question, which I have already stated in the division of my argument.

Gentlemen, the issues in this case are so momentous, the subjects necessarily involved, and which require discussion with a view to an intelligent determination of those issues, are so numerous, that I do not think you will consider any apology necessary on my part for the length of time that I shall occupy, when you remember that the words which I speak to you are the last words that will be heard on earth in the prisoner's behalf, before the question shall be determined whether the prisoner at the bar shall live or die.

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The prosecution must satisfy the jury that the prisoner at the bar had the murderous, premeditated design to kill. "Premeditated design to kill" was changed last year by adding to it "deliberate"—"deliberate and premeditated"—but the new law does not apply to old offenses, so that we have two rules in this state, one applicable to Stokes and the other milder rule to offenses committed after the passage of the new statute. The words "premeditated design to kill" have been construed to mean an instantaneous premeditation, although the Supreme Court in this district struggled against that interpretation, and said the word premeditated implied just what the present statute says—deliberation and premeditation. And that I have always believed was the fair meaning of what the legislature meant when they introduced this word "premeditated." Yet the Court of Appeals having held otherwise, we bow to that decision. Stern and severe though we may regard the decision, we accept it, but we demand that if the prosecution will have the pound of flesh, under this construction, no Christian blood shall be drawn.

We demand, if you will apply the stern old rule that has passed away forever as to future cases, to the case of Stokes, and will insist that the premeditated design may exist, although formed on the very instant, that you shall so clearly satisfy the jury that this complete premeditated design existed, that there can be no doubt about it. And here we see the humanity of the law; which when you assume the attribute of Deity in a matter where you may make mistakes, it is not asking too much, that you may attempt, so far as poor human nature will permit you to do, to keep open those humane sympathies, those tendencies to gentleness, to charity, to

mercy, that disposition that ought to animate every generous heart, not to seek for guilt, not to look on the dark and sombre side of the picture, but on the other hand to assume charity, mercy, doubt, and to give to the prisoner the benefit of these humane conditions in the criminal law.

* * * A reasonable doubt is the great solvent that may dissolve the most complicated questions of fact. It is the property of the prisoner, more valuable to him perhaps now than the mines of Golconda or of California; more valuable than all this world's possessions, for what will a man not give for his life? Not only does this presumption exist, but you are to give him the doubt which the law declares his property upon every branch of the case. And if it were not for the presence of these humane doctrines, oh, how liable would men be to be sacrificed by mistakes committed honestly on the part of the jury, when they seek to penetrate the heart of the prisoner. You are therefore to look into his heart. You take the place of Omniscience; you sit in judgment, performing the most delicate and responsible function that can possibly be entrusted to a human tribunal; you are to inquire whether the prosecution has proved in this case the presence of that murderous purpose which constitutes the essential element in the crime of murder, and is included in the words of the common law as they existed before the statute was passed, which words were "malice aforethought;" and the same intent is necessary in order to constitute the offense of murder in the first degree, involving the question of a premeditated design to take life. I said to you that you are assuming the attributes of Omniscience. In the sacred scriptures this attribute of the Deity is thus alluded to: "Who can know it? I the Lord search the heart, I try the reins, even to give every man according to his way, and according to his doings." "But, oh, Lord of Hosts, that judgest righteously, that triest the reins and the heart, let me see Thy vengeance on them; for unto Thee have I revealed my cause." Oh, see to it, gentlemen, that you make no mistakes in assuming that function which, when exercised by Him who sees the hearts and tries the reins of the children of men, is always infallible; and in weighing the evidence bearing upon the question as to the heart of the prisoner, am I asking too much when I ask you to remember that the same Deity who does try the hearts and the reins of men is filled with gentleness and mercy.

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I ask you, who would have a motive to kill, if the facts are as the learned district attorney assumes them to be? Between these men, as I say, friendly relations had existed. They were broken

up. The learned district attorney is right in saying that Fisk was jealous. I agree to it; it is proved by Mansfield and Williams; and that a short time before meeting these parties, Fisk had sought an interview with the woman Mansfield, and had endeavored to persuade her to resume her relations with him, had asked her to discontinue her proceedings at Bixby's, when this woman, no matter how false she may have been, of which we have no evidence whatever—she has many excellent traits—said to him, "Sir, unless you will vindicate me against the false charge contained in the affidavit of your hireling—that colored boy, King—I will never discontinue these proceedings. Vindicate my character, and all will be withdrawn." To which he answers that, so far as he was concerned personally, he would have no objection; but that there were so many persons involved, and so many complications, he couldn't do it. And then, in the course of the interview, he declares that he will kill the monster Stokes; he will kill the man who, as he believes, has stepped between him and this woman. The poet says, "Hell has no passion so fierce as love to hatred turned." Fisk had it. Fisk was jealous. Stokes was not jealous. Stokes was aggrieved. Stokes had been persecuted, ruined in character and in property by Fisk; but, with the exception of the poor creature, Parker, there is no evidence that one word of a threatening character ever fell from his lips. Where, then, is the motive? Stokes thought he had legal claims against Fisk to the amount of hundreds of thousands of dollars. He was going from lawyer to lawyer to prosecute these claims. He thought that when the agreement to pay him two hundred thousand dollars was broken up, and under the form of an arbitration, whereby, in his credulity, he had submitted to the very lawyers of Fisk, his case, that he had been swindled, and he thought he could set aside the award. He applied to Marsh and other lawyers to take proceedings to set it aside. But he thought he had claims against him, and the only way in which he could try the question was by having Fisk's life spared. Kill Fisk! and he would kill the goose that laid the golden egg. Kill Fisk! and there is no more chance for redress from these wrongs that he believed he had suffered, that had been brooding upon his mind ever since his business was broken up, by a band of armed ruffians, his mother's inheritance was taken from him, and he ignominiously thrown in prison, to come out with a tarnished reputation, with the facts of his arrest and imprisonment blazoned through the newspapers; he, a young man with a college education, connected with some of the most respectable people in the city of New York, against whom the breath of a suspicion,

up to this time, had never been known; branded as a felon, ruined in property and character, his standing in the community impaired, with no remedy except to resort to the courts of law; and yet he goes and kills the only man whose preservation and existence were necessary to allow him to have an opportunity to vindicate himself and establish his legal rights. Go on, then, with me a little farther, for the absence of motive is only one of the pregnant circumstances which meet us at the threshold of this investigation. He told a hackman, they say, "Go to the Grand Central Hotel." If he meant to go there to waylay Fisk, was it not strange that he should have made this expression to the very witness who, of course, would remember what he said if that assassination should take place there? If he was going to waylay this man, why did he go down to the Grand Central Hotel? Were there not abundant opportunities to shoot him in a less public place—where Fisk was not among his own personal friends, and where there were not so many persons who would be witnesses to the whole transaction?

Now, look at the surrounding circumstances. According to the theory of the prosecution, this man who had been harboring murder in his heart for a long time, instead of seeking some secret place where he could perpetrate the deed, goes to one of the largest hotels in this great city; he seeks a holiday, as you may say, Saturday afternoon, and there in that place, swarming with guests, right on Broadway, where, on every side, the popular currents pass and repass, he takes occasion to shoot him; there is no friend with him, no lawyer to advise him, after the deed is done, what to say, or what not to say; no kind, sympathizing companion to aid him by counsel or by act; all alone, on a Saturday afternoon, in this crowded hotel, he takes occasion to perpetrate a murder! How was he dressed? Dressed as a man would be who is lying in wait for a victim? There are the gloves [exhibiting them to the jury] close around his wrist, lined as any gentleman would be likely to have them in the winter season, with that cloak upon him, long, cumbersome, and that little whip in his hand. Was ever a murderer clothed in such attire, with such aids to the perpetration of his deed? Did ever a murderer, of intelligence, not belonging to the lower strata of human society, but a young man of culture, of high family associations, go, all alone, into a place like the Grand Central Hotel, and there perpetrate a murder, with gloves on, and a cloak on, and with his little cane in his hand; and the moment he had done it go out and call for a doctor? This man, who wanted to kill his enemy, who had been harboring these diabolical purposes,

who would rejoice to know that his purposes had been accomplished, firing only two balls from a revolver that had four; firing one shot in the abdomen, not in the heart or head, another in the arm, penetrating near the elbow, and then escaping, not with the cool deliberation of the murderer, but attracting attention by the bewilderment, excitement and paleness that he displays, dropping his pistol in his flight—a fact clearly proved, notwithstanding the testimony of Tommy Hart that he first put his pistol under his left arm, and then brought it as if putting it in his pocket. I will ask you, by and by, when I review Tommy Hart's testimony, to tell me what had become of the pistol, if it was dropped in his pocket, as he pretends, when the men down stairs searched him thoroughly, and found no pistol there. This prisoner, under these circumstances, comes down the steps, in the language of Bligh, a most reputable witness, residing in Rome, who has appeared for the first time on this trial, and has his attention called to him, and when he saw him he "thought it was a lunatic coming; he seemed like a madman, all pale, bewildered and excited." He was seized in that condition. All concede, who are entitled to be believed, that he called for a doctor; the witnesses for the prosecution prove it; Tommy Hart didn't hear it; Tommy Hart heard nothing that would benefit us; but you hear it through the mouths of the witnesses as plain as if you had heard him utter it on that afternoon.

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He passes down, looks into the reading-room, he had never been on the second floor of this new hotel, that had been so eulogized in the newspapers; looks around at the hotel, goes down the dining-room hall, looks into this parlor; turns around, passes out with this pistol in his pocket, that he had procured six months before; he tells you when and where he procured it, and there is no breath of contradiction; tells you he had procured it for the purpose of self-defense against the enemy that he believed sought his life, and no more anticipating that he would meet James Fisk than that he would meet the prince of the infernal regions himself, marches into that private entrance; it is dark; several witnesses say it was dark down there; the light had not been lit; a man enters; he does not recognize him; he passes on about his business; he goes down two or three steps; this man comes up rapidly; he touches the broad landing; he begins to ascend the staircase, and then, for the first time, as suddenly as if a ghost had risen from the grave, he discovers the apparition of this man who had been threatening his life; this man whose emissaries had been dogging his track for many months; this man who held supreme power in this city. And

when you tell me that Stokes should go to the courts of law to seek redress from him, oh! what a mockery it is, when Fisk boasts that he can railroad his enemies to prison; when he boasts that his touch is the touch of the grave; that the men who cross his path will feel the cold and clammy touch upon them, as in the Dorman B. Eaton case, that had attracted the indignation of this city, and of the world, who was stricken down after he had ceased to be the counsel for Fisk and the Erie Railroad, and had dared, as an honorable lawyer, to espouse the other side; stricken down at midnight by the blow of the assassin, his constitution ruined by a deadly blow aimed at his head, when about entering his own house, and the prisoner had learned that he was to be treated by this man in the same way. This apparition appears before him; and what does he do? He instantly springs to the other side, so as to get out of his range, and without regard now to the question of Fisk drawing the pistol, to which I shall call your attention more specifically and minutely under another branch in the case, fires in an instant; fires twice; turns around to this passage-way into that room, on the opposite side of the entrance that leads down stairs; stops for a moment on the threshold; is seen to make a motion with his hand, where undoubtedly the pistol was dropped; passes along; meets this man Hill; Hill says, "What's up?" He says, "Go! there is a man shot," attracting attention, of course, to himself; all excited, as Hill says, passes on down the dining-room hall, down the stairs repeating the alarm, "A man shot; go and get a doctor;" excited, bewildered, crazed; the deed has culminated; these difficulties on the part of the enemy who had sought his life, the enemy who had ruined him, the enemy in whose hands he was as powerless as the fly in the spider's web; this man appears before him at a moment when he thought he might innocently take a little recreation on Saturday afternoon, and that he might be relieved from the presence of that vision that had haunted him, that had been brooding upon his mind, until, in the beautiful language of Lord Erskine, in vindicating the modern doctrine of insanity as an excuse for crime, "Delusion had taken its seat side by side on the throne with reason, and brooded over, and discolored every thought and emotion of his heart."

And now, gentlemen, after a practice of more than thirty years at the bar, although I assure you that this is the last criminal case, where a life is involved, in which I am likely to appear as counsel for the defendant, for the draft is too great upon my physical and emotional nature—after an experience as counsel for the government, in official positions, or as counsel for the prisoner, I have

been engaged in between thirty and forty capital cases, I have never known a story so completely corroborated, from one end to the other, as the story of Edward S. Stokes. All along, from the time he came from Bixby's Court until that fatal hour when the parties met in that private entrance, there seems to be a pathway of intelligence and of light, sustaining his statement and confirming our theory of the case. It is sustained by Andrews, by Bixby, by the clerk, by Doty, by the telegraph operator Coles, by Cotterell, the lawyer who was present, by McLoflin, who met him at the Hoffman House, where he was boarding, who had been assisting in preparing his case, and who told him where other witnesses could be found.

The law of self-defense has existed in all countries and among all nations, and is recorded in every criminal code that has been ever promulgated among civilized nations. It had its origin and was proclaimed, before the advent of our Saviour, in old Rome, from whence the civil law emenated that has been adopted by all the nations of continental Europe. It was adopted at an early period in Great Britain, as part of the common law, and was brought to this country by our ancestors. It is a law above all human laws; it is a law which an all-wise and all-merciful Creator has implanted in every human heart along with those instincts that are common to the animal creation, intelligent and unintelligent. Human laws cannot ignore it nor obliterate it. It is a law that is implanted in the animal creation from the highest to the lowest. The lordly elephant as he roams through the forests of Africa, when pursued by his hunters and driven to bay will turn and fight his pursuers; the vilest worm that crawls in the dust will turn and bite the heel which presses it down and crushes out its life.

I have alluded to the law of Rome. I hold in my hand a most masterly vindication of this law of self-defense, proclaimed by one of the greatest orators of ancient times, the learned Cicero, who was familiar with the laws of Rome when Rome was mistress of the world. He lived before the advent of our Saviour; and more than a hundred years before the birth of Christ, in one of those masterly orations that have been handed down to posterity, and that will live wherever oratory is recognized, he thus vindicates and justifies, in language better than any I could employ, and which I desire to adopt, this great law of self-defense. Two Roman noblemen who were candidates for high offices in the Republic, and who were bitter enemies, were brought into collision, and the one, Titus Annius Milo, slew the other, Publius Clodius, while

Clodius was a candidate for the office of Prætor, the highest office in Rome—Milo was brought to trial before the Roman senate when Pompey was Prætor—Pompey was a friend of Clodius. Pompey had ordered passed a special law directing an investigation into this case by the senate, and Cicero alludes to that fact in his address. Cicero found that Pompey had surrounded the senate chamber with armed retainers; although the pretense was, they were there to preserve the peace, Cicero knew they were there to overawe the senate. The circumstances of this homicide are thus forcibly stated by the historian in the preface to the argument:

"Titus Annius Milo, often in the following speech called only Titus Annius, stood for the consulship while Clodius was a candidate for the prætorship, and daily quarrels took place in the streets between their armed retainers and gladiators. Milo, who was dictator of Lanuvium, his native place, was forced to go thither to appoint some priests, etc.; and Clodius, who had been to Arica, met him on his road. Milo was in his carriage with his wife, and was accompanied by a numerous retinue, among whom were some gladiators. Clodius was on horseback, with about thirty armed men. The followers of each began to fight, and when the tumult had become general, Clodius was slain, probably by Milo himself."

Cicero, the greatest orator of Rome, presents this doctrine of self-defense, and pronounces this beautiful vindication of that law:

"This, therefore, is a law, O judges, not written, but born with us—which we have not learnt, or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught, but to which we were made—which we were not trained in, but which is ingrained in us—namely that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honorable. For laws are silent when arms are raised, and do not expect themselves to be waited for, when he who waits will have to suffer an undeserved penalty before he can exact a merited punishment."

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"But if both reason has taught this lesson to learned men, and necessity to barbarians, and custom to all nations, and nature itself to the beasts, that they are at all times to repel all violence by whatever means they can from their persons, from their liberties, and from their lives, then you cannot decide this action to have been wrong, without deciding at the same time that all men who

fall among thieves must perish, either by weapons, or by your sentence."

And that is the condition of the prisoner at the bar; he was, if the facts be as I shall endeavor to establish them, in the peril of a man who must fall a victim before Fisk or his myrmidons, or, if he rescue himself from that danger, he must perish ignominiously upon the scaffold by your verdict.

Cicero then portrays another portion of the case, quite similar to ours, and shows how this Clodius, like the deceased, was a man who was so obnoxious and had so debauched the youth of Rome that that circumstance was proper to be taken into consideration in connection with the defense of justifiable homicide, and that the prisoner instead of being punished ought to have honor, in this language:

"If Cenæus Pompeius himself, who is a man of such virtue and such good fortune that he has at all times been able to do things which no one except him ever could have done — if even he, I say, had been able, in the same manner as he has ordered an investigation into the death of Publius Clodius to take place, so also to raise him from the dead, which do you think he would have preferred to do? Even if out of friendship he had been willing to raise him from the shades below—" (for the Christian religion had not then brought its blessed revelations to mankind)— "out of regard for the republic he would not have done it. You, then, are sitting now as avengers of the death of that man whom you would not restore to life if you thought it possible that his life could be restored by you. And this investigation is appointed to be made into the death of a man who would never have seen such a law passed, if the law which ordered the inquiry had been able to restore him to life. Ought, then, the slayer of this man, if any such slayer there be, to have any reason, while confessing the deed, to fear punishment at the hands of those men whom he delivered by the deed?

"Grecian nations give the honors of the gods to those men who have slain tyrants. What have I not seen at Athens! What in the other cities of Greece? What divine honors have I not seen paid to such men! What odes, what songs have I not heard in their praise! They are almost consecrated to immortality in the memories and worship of men! And will you not only abstain from conferring any honors on the savior of so great a people, and the avenger of such enormous wickedness, but will you even allow him to be borne off for punishment?"

In England, Blackstone, the great commentator upon English

law, and a writer upon the common law which our ancestors brought with them to this country, and which, as I have already said, has been incorporated into every one of our three state constitutions, beginning with the constitution adopted immediately after the Declaration of Independence—thus lays down this law of self-defense; and Blackstone, as you all know, although you are not lawyers, is the very first book put into the hand of a student in a law office.

"For the law in this case (self-defense), respects the passions of the human mind, and (after external violence is offered to him), makes it lawful in him to do himself that immediate justice to which he is prompted by nature, and which no prudential motives are strong enough to restrain. * * *

"Self-defense, therefore, as it is justly called, is the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society. In the English law, particularly, it is held an excuse, even for homicide itself. (3 Blackstone, p. 4.)

"Self-defense is that condition whereby a man may protect himself from an assault, or the like, in the course of a sudden broil or quarrel, by killing him who assaults him. * * *

"The party assailed must therefore flee as far as he conveniently can, or as far as the fierceness of the assault will permit him, for it may be so fierce as not to allow him to yield a step without manifest danger of his life or enormous bodily harm, and then in defense he may kill his assailant instantly. And this is the doctrine of universal justice, as well as of the municipal law."

I ask again: How did the character of Fisk reveal itself to the mind of my client? For you will remember that the authorities that were read in your presence, declare that the jury are not to judge as they would judge of a party in the clear light of subsequent developments; but as this man was obliged to judge on the instant or perish, as he supposed, in the light of his apprehensions and fears, as they existed in the mind of this young man when he met Fisk—a young man against whom not one syllable of reproach, so far as we can learn, had ever been uttered before he formed this unfortunate and melancholy association with Fisk, upon the solicitation of Fisk himself, which has resulted in all this woe, all this peril to the prisoner—he was the man who made the attack upon Eaton, and who threatened to serve the prisoner the same way. To Edward S. Stokes he was the man who had told him his touch was cold and clammy, and there were graveyards for those who crossed his path; and to Stokes he repeated this conversation before the shooting took place. To Edward S. Stokes he was the man

who held possession of the court where Recorder Hackett presided and others, through which he threatened to railroad him to state prison. He was the man who was received with open arms with those associates who were proved to have been his witnesses when he came to the Grand Jury room. Stokes desires to get rid of some injunction order, the nature of which, doubtless for prudential reasons, the prosecution has not put in evidence; but he is met by an affidavit sworn to by a colored boy named King, and he is defeated. King having been used by Fisk, like a squeezed orange, is thrown away and flees the country. To the prisoner's mind Fisk was a man so destitute of moral sense, that he would not hesitate to organize murder! He is a high naval and military officer; he rejoices in an admiral's uniform, and rides in Broadway at the head of a regiment with a thousand muskets behind him; he is a friend and co-director with Tweed, Gould & Co. Legislation is run in their interest. The Classification Act perpetuates in power the men who had stolen possession of the road. He runs the Erie Railroad with its hundred millions of capital, its extensive tributaries and its army of retainers. With one wife in Boston, as his will would indicate, he keeps a mistress openly and flaunts his licentiousness in the heart of this Christian city. Private secretaries attend him, as if he was an Oriental prince. Like the Roman Centurion, he says to one, "Go," and he goes, and to another, "Come," and he comes. Princely wardrobes attest his resources, including pantaloons with pistol pockets and without, according to the necessities of the case and the exigency that surrounds him. Africans and Belgians wait upon him in his bedchamber, assist him to put on his wardrobe, and stand, ready to obey his orders. Colored servants, clad in livery, drive his costly carriage, as he rolls in splendor through the streets. On great state occasions, like Black Friday, or during the raid on the Susquehanna Railroad, or when he is under the necessity of leaving the state temporarily and living in New Jersey, he takes his mistress with him. He rolls through the streets with gilded harlots by his side, and the district attorney thinks it is very strange that Stokes should know any of these creatures. I think he ought to make an apology to Stokes. When I was spending a winter in Florence I saw every afternoon two carriages that were well known in Florence as the carriages of the mistresses of Victor Emmanuel, King of Italy. Everybody knew them; but the King of Italy never rode side by side with them on the Casino, nor through the streets of Florence, and if brother Phelps had come there and had told me he had seen the king's mistresses on the Casino that afternoon, and I had said,

"Ah, brother Phelps, how did you know they were the king's mistresses?" the response would come, "Why I know it, because everybody in Florence knows it;" when of course his vindication would be complete.

To the mental vision of Edward S. Stokes, he was a man who had turned him out by force from the property which his mother owned; the oil refinery was carried on by him, he receiving fifty per cent of the profits; entrusted by that mother with the entire management of her business, and in a night after a claim had been made that those improvements, amounting up to $100,000, which he was to make for Stokes, and let him in, and give him twenty per cent of his income, and, under the advice of Mr. Beach, that mother and this agent took possession. On Monday morning the myrmidons of Fisk are found there; the prisoner's business is broken up, and almost at the same instant he is thrown into prison, robbed of his property, and Fisk boasted that he had robbed him of his property, and that he would wipe him from the face of the earth; a most terrific expression of vengeance on his part.

To the prisoner's mind he was the man who runs the machinery of the courts; to the prisoner he was the man who after having agreed to give him $200,000 for a settlement, omitted to perform the contract, under the allegation that the agent of the company was afraid, and afterward, upon another pretense, broke it up; and finally, he was the man who in the mental vision of the prisoner was the perpetrator of rank injustice toward him, because by artifices and frauds, under the form of an arbitration award, the men had sold him out who were in the interest of Fisk, and had given him a small sum by the award, whereupon he goes around the city with the certificates or checks for the amount, refusing to accept them, and proclaiming everywhere the great wrongs he had suffered at the hands of this Fisk. Fisk, in the meanwhile, is seated in his royal castle in the very heart of New York; Fisk issues his orders like an oriental king; Fisk is the man who brings ruin and commercial distress upon the interests of the business and the commercial relations of the people, and then treats it as the merest joke in the world.

This, gentlemen, is but a feeble and imperfect portrait, which we are enabled to draw from the evidence produced in this case, of the character of a man of whom the like has never been seen since the days when the Roman patricians corrupted the youth of Rome, and were guilty of acts kindred in character to those that characterized the conduct of James Fisk.

On the other hand, Stokes comes before you for his portrait. Stokes knew that Fisk was jealous of him, and from being his friend, he had become his mortal enemy. And who was Stokes? His training and associates were such as would not be naturally calculated to inspire you with the belief that he was corrupt. Here sits his old father by his side; there sits his mother; she for her oldest son has borne the pains of maternity; she has dandled him upon her knee; no doubt she has taught him to utter with his infant lips the Lord's Prayer; and she believed she could rely upon him, her eldest son, to sustain and support herself and her aged her husband in the declining walks of life. She came with that son to this city, so attractive to the educated, enterprising and cultured youth of our land. He came here from college, and then Fisk marked him for his victim. Fisk sent for him to come down, when their business associations were formed. It was by the agent of Fisk that the woman Mansfield was introduced to the prisoner, after which event, unfortunately, the jealousy of Fisk was aroused toward the prisoner, and then came that system of persecution which has been but partially revealed in this case, yet which exhibits a picture of oppression and wrong on the part of Fisk toward the prisoner at the bar which, for the honor of my state and the honor of your great city, I think is without a parallel in the history of criminal cases. Contracts are disregarded, the refinery broken into, the business of the prisoner destroyed, he thrown into prison, a false villain found to swear falsely against him in an affidavit, when he seeks to go to court; the prisoner begs to be heard by the Grand Jury, and his prayer is peremptorily denied him; he supposes he has claims at law against Fisk, and seeks legal redress to set aside the award, and to have an assertion of his rights; he believes he has a just claim against him, which, of course, would be lost and defeated the moment Fisk dies; then, on the sixth of January, his trial before Judge Bixby, or her trial, in which he was interested, although not a nominal party, she being the complainant, comes off; he then proceeds innocently to prepare for the approaching trial at Providence on the ninth of January; then followed the unexpected, the casual, and the accidental meeting between these parties to which I have already called your attention.

But they say the prisoner's story varies from his evidence on the other trial; because the prisoner there omitted to state that his expression was, "Don't shoot." Now, I say that this trifling discrepancy in the story of Stokes, as told on the second trial and on the third trial, is in itself a strong evidence of the truthfulness of

his statement. The stories are substantially identical; they are merely two accounts of the same transaction, of course varying in the particular phraseology and some of the incidents, but the material incidents and facts and the fair import of the two being the same, they convey but one idea of the transaction to an impartial hearer. I am surprised to find that it is not in the reporter's notes, and I am free to say, I have attended these three trials, and if it was omitted by Stokes in telling the story on the second trial, it is as much my fault as his. Do you believe I would have failed to call it out if I had noticed the omission? and if the counsel on the other side, shrewd and ingenious, Messrs. Beach and Fullerton, who were associated with the district attorney, two of the ablest and keenest lawyers at the bar, had discovered that there was that omission, they would, of course, avoid asking about it on the cross-examination, and would steal around it. Yet you have the fact that the prisoner in this case told that story on the first trial, and the same counsel appeared here then that appeared on the first trial. If you are satisfied that he did not tell it, it only shows how apt we are to omit some little incident, or to forget to call the attention of the witness to it, which we certainly would have done if we had supposed it was omitted. We had every reason to suppose he testified the same way as before, because they made no point of it on the other side; they didn't call the attention of anybody to it, that it varied from his testimony on the first trial. We have shown you that he did testify to it on the first trial, and, according to the second reporter who took that portion of the testimony, they omitted to ask him whether any such expression was used, and it would be a most extraordinary mode of setting aside the evidence of a witness, not because he had sworn that such a thing didn't take place, but that in the examination of two days, he had omitted to state one particular feature of the transaction.

Now, I have finished this branch of the case, and I submit to you that the prisoner stands justified by the laws of God and of man; I submit to you that the testimony of the prisoner is not to be rejected; and I submit to you further, that if the prisoner saw a pistol drawn upon him, and Fisk was in the act of firing it, he was not obliged to run up these stairs and run a distance around the corner of about eight feet before he would be free from danger, because he would be certain, in all human probability of being shot in the back; and in that case, I submit, it comes within the principle which I have read from Blackstone, before pistol balls were so common, that if the attack was so fierce that the party

could not escape without imminent peril, he had a right to turn and slay his assailant.

Now, I come to the fourth and last question, which will be very briefly discussed. I claim that the prisoner—if you shall come to the conclusion that there was no other pistol, and he had no good reason to believe there was one—was insane on that subject and in regard to Fisk. I claim that he was a monomaniac as regards Fisk. I maintain that he was laboring under a delusion as to the purposes and intentions of Fisk—those intentions as they are revealed and have been referred to under the third branch of our defense. I was reluctant to present this branch of the defense, because I know with what distrust the defense of insanity is regarded by a jury; but I was anxious to get in all the expressions of fears that had been used by the prisoner, and his honor said they could only come in under that branch of the defense. I believe, in this case, that if you find there was a second pistol, it will be entirely unnecessary to consider this question; because I think you will say he was justified. It is only in the discharge of my solemn and responsible duty here, believing that this man's mind may have been in that state of nervous apprehension, that, if he had not absolutely passed the border line between sanity and insanity, he was so near it that it is difficult for human tribunals to decide on which side of the line the prisoner stood, that I call your attention to this defense. I believe, upon the evidence in this case, it will be your judgment that it was my duty to present to you the evidence bearing upon this subject. Now, what is the law in regard to insanity? His honor will instruct you that the revised statutes of New York declare in so many words, "No man shall be punished for an act committed in a state of insanity." What constitutes insanity? I shall not enter upon that most interesting field of medical and legal jurisprudence; the medical profession has published and written more and lectured more as to what constitutes insanity, within the last quarter of a century, than upon any other branch of medical jurisprudence. I do not deem it necessary to adopt any of the theories of these doctors, who, as I believe, are more abused than they deserve to be when they are called "mad doctors." My experience has taught me that there these secret, these occult movements of the human mind, evincing to the practiced eye the presence of delusion and insanity which the public at large are not prepared to accept.

I shall ever regard it as one of the proudest incidents of my professional life, that in the case of McCann, which stands reported in the Court of Appeals, where a poor Irish cartman, McCann, having

formed an unfortunate matrimonial alliance in Albany, became intemperate, had a drunken debauch, with his keg of rum by his side, having lost his horse and cart, and finally, in a moment of delirium, the insanity which follows delirium tremens, chopped his wife all in pieces, first with an axe and then with a hatchet, and then went into the church with his sleeves rolled up and proclaimed the fact, and finally was found over in Greenbush, in the cellar of an unoccupied house, and brought back for trial. I appeared to defend him without fee or reward; and offered to show the fact that he was crazy, and part of the evidence I relied upon to show that he was insane was the unnatural atrocity of his crime. That was at the time when the American or Know-Nothing excitement ran high; the public demanded that he should be hung, and he was condemned to be hung. The Supreme Court sustained his conviction, and it was carried to the Court of Appeals, where Judge Peckham and myself argued the case for the prisoner.

Judge Gould, who had been elected by the American party (none the worse for that) had laid down the doctrine at the trial that, although in all the other elements of crime, if there was a reasonable doubt the prisoner should be acquitted; yet that, when you come to the question of sanity or insanity, the burden of proof was shifted, and it was incumbent upon the prisoner to prove his insanity beyond all reasonable doubt, and if he did not, the normal condition, which was sanity, was to be presumed. The Court of Appeals unanimously condemned the doctrine and said, that on the question of sanity, as well as on every other condition constituting the offense of murder, although the law presumed sanity in the first instance, yet when the issue was raised by the introduction of proof on that subject, the jury must be instructed, if they had a doubt upon that question, that doubt should inure to the benefit of the prisoner, and the prisoner should be acquitted. And although two trials resulted in disagreeing juries, finally Judge Wright accepted a plea of manslaughter in the first degree, and McCann was sent to Clinton prison. There his disease became fully apparent, and he was sent to a lunatic asylum, where he died a confirmed lunatic.

Was this person, then, insane within the meaning of the American law? I understand the rule of law to be precisely as it was laid down by the twelve judges in England in answer to a question propounded to them, viz.: that if, by reason of mental derangement, the prisoner, at the time he committed the homicide, was not aware of the real nature and consequences of the act, but labored under such a delusion as to believe what was not true, and that

belief affected his condition and his sanity, and if he did not know that what he was doing was wrong, then the delusion or insanity, whatever you may call it, operates to exonerate him from criminal liability.

This brings the case down to this question upon this part of the defense: if you come to the conclusion there was no pistol, is there not abundant evidence to justify an acquittal of this prisoner upon the ground of insanity? I say, if there was no pistol, he was insane. I say that the proof at least raises a reasonable doubt upon it, and, according to the authority of the McCann case, that doubt is his precious inheritance. Consider the prisoner's case: a descendant from ancestry of insane stock, with insanity breaking out in his family, as stated to you by his father. Consider that the causes of insanity are shock of mind, loss of near and dear relatives, loss of property, loss of position, and unmerited loss of character. No man who has never felt the poisonous virus of slander curdling his very blood can know the intense effect upon a sensitive and proud man of such an attack upon his character as resulted from throwing this young man of culture and position into prison. His wife and child were absent, his family connections were respectable, his business had been successful; he had been receiving fifty per cent of that business, and his mother had entrusted him with its whole management. In an evil hour, however, Fisk sought his acquaintance. Fisk had a mistress. Stokes, with or without cause, it matters not here which, for we cannot try that question, excited the jealousy of Fisk; and then commenced that system of wrong and oppression on the part of Fisk which is only partially revealed by the evidence. The rules of the common law are so rigid and so strict that we find great difficulty sometimes in getting a full portrait before the jury. He is thrown out of the oil refinery; covenants and contracts are violated with impunity; he seeks counsel, and having his mother's confidence, under the advice of counsel he proceeds to take possession as the law allows. Then come the minions of power and turn him out; his business is broken up, and his disgrace is heralded through the press when he was thrown into prison upon a false charge; he, whose character has never suffered before, is branded as a felon. He brings suits yet undecided; injunctions are procured against him, which he seeks to vacate, but is met by a false affidavit made by one of Fisk's minions by the name of King, who, having sworn for that purpose, so as to accomplish the object, and the motion to vacate is denied, runs away and leaves the country. Then a swindling award, as he believes, is procured by his trusting to the

lawyers of Fisk, and Stokes runs round the city exhibiting the checks given for that award, but refusing to accept the money. A pretended reconciliation takes place, in which he is to receive $200,000; but about this time Eaton is waylaid, and Fisk boasts to his mistress that he is the author of that wrong. Fisk's agents begin to follow stokes everywhere; he seeks relief before the grand jury, but the doors of the grand jury are closed against him. Fisk boasts of his plans and of his power to railroad him to state's prison. Hackett sits enthroned upon the court where complaints against Stokes are to be tried, and Barnard and Cardozo sit in the oyer and terminer. Fisk goes to the grand jury, and his complaint is dismissed, which ought to terminate the matter; but again and again he perseveres, painted harlots go with him, public officers are seen accompanying him arm in arm, the doors of the grand jury room swing open to the great Fisk to renew his complaint again and again, with such new testimony as he is able to bring from the stews and houses of pollution of the city, against the character of this young man. In the meantime the mind of the prisoner begins to break; he visits his parents and sends for a pistol. That change in a man's deportment which marks the incubation of insanity, attracts the attention and excites the alarm of the aged father and the watchful mother. That mother knew every movement, every feature, every expression of the eye; she is not present at all the conversations between Edward and his father, but when she comes her attention is called to the wild and excited appearance of Edward; Edward is changed, and she speaks to her husband about it; his eyes are wild and his manners excited. The difficulties increase, Fisk's terrible threats begin to pour in upon him, he sees enemies sent out by Fisk attacking him on every hand. He ventures out only in the night. He pays $600 to get rid of rooms exposed to the vengeance of these enemies, real or imaginary. He is proud, sensitive and respectably connected. He begins to talk in such a manner as to become a bore and a nuisance; at last the idea seizes possession of his intellectual powers, with or without foundation, that Fisk entertains a settled purpose to kill him; he knows Fisk's great power; Fisk had boasted to him of his power and his resources, and of his cold and clammy touch, of his graveyard for his enemies, and of his determination to serve him as Eaton had been served.

Then, under the circumstances disclosed by him in that dim passage-way, he sees a man enter the doorway; it proves to be Fisk. Then there stands before him the mortal enemy who, to his mind, had sought his life; he sees him, or thinks he sees him, in the act

of murdering him. He shouts first this exclamation, "Don't fire!" and then, quick as lightning, fires two shots, one after the other, with no time for premeditation. Then he turns to avoid the man whom he has shot; he goes in an excited and bewildered manner, calling out, "There's a man shot, get a doctor;" all concur in saying that he presented the appearance of an excited and bewildered maniac, in substance.

O, gentlemen, would you hang that man, or would you say to him, as the Master said to his enemies when they were crucifying him upon the cross, "Father, forgive them, for they know not what they do?"

Gentlemen, upon all these questions, the law, the civil law and the common law, is full of maxims of charity, benignity and mercy, as applicable to a trial for crime. Do not misunderstand me; you have not the pardoning power; and if a man is proved clearly to be guilty, you must say so. But in weighing conflicting testimony, in examining into the heart of a man charged with crime, where the essence of that crime consists in the wicked, murderous purpose, it is your duty to exercise charity, gentleness and mercy. There are numerous maxims, but I will only read one or two of them here that I have before me in the Latin tongue, and in the translation Coke says, "In criminal cases the proofs ought to be clearer than light." Hale and Plowden say, "In penal cases the more favorable interpretation should be adopted." The same great writers say, "Always in doubtful cases, the more favorable views are to be preferred, *i. e.*, the more liberal interpretations are to be followed." "All things are presumed in favor of life, liberty and innocence."

And now, I have finished my argument. As the conclusion of the whole matter, I submit that there is a reasonable doubt on each one of the four questions that I have discussed before you:

First, There is a reasonable doubt whether the prisoner inflicted a mortal wound, of which mortal wound James Fisk died.

Second, There is a reasonable doubt whether he killed James Fisk with a murderous and premeditated design to kill.

Third, There is a reasonable doubt whether the killing of James Fisk, if he died from the wound, was not perpetrated under such circumstances as to constitute justifiable homicide.

Fourth, There is a reasonable doubt whether the prisoner's mind was not in that disordered condition that he was not capable of understanding the nature of his act, and to know that the act was morally and legally wrong.

It is enough for me that I have shown a doubt upon a single one

of these various propositions. It is not merely a doubt on the whole case, but it is a doubt on any branch of the case or on all the branches put together, which entitles the prisoner to an acquittal. Therefore, gentlemen, in the name of justice, in the name of the law, in the name of the oaths which you have taken, I ask, aye, I demand, the acquittal of this prisoner from the charge of murder!

I know the power of the district attorney, who is to follow me. I know with what effect the whole artillery of the law, wielded by the representative of the government, will be brought against this defenseless young man, in whose behalf the words I am now uttering will be the last words that will be heard on earth, in his defense, before his fate shall be decided. But I know, with all his power, there is one thing the district attorney cannot do—he cannot restore the dead to life, and, until that Divine attribute is conferred upon him, he cannot breathe the breath of life into the corrupt and perjured testimony which has been given in this case on the part of the prosecution. And I tell you, gentlemen, that in determining the questions of fact in this case the responsibility rests with you, and with you alone.

Six hundred years ago the barons of England wrung from an English king the Magna Charta; among the privileges conferred by it was the right of a citizen to be tried by a jury of his peers; they would not trust the judges, who held their offices from the crown; they feared they might lean in favor of the crown in a contest between a citizen and the government; and this great privilege, this great bulwark, has been maintained in England to this day. This right of trial by jury was brought to this country by our ancestors and has been imbedded deep in all our constitutions of the general and of the state governments. What does it mean? Is it not equally valuable here as in England? True, our judges are elected by the people, but the people, the masters, may be quite as unjust and arbitrary as the king. It is the jury who alone are responsible for the verdict that shall be pronounced; you cannot divide, you cannot delegate, you cannot share the responsibility of that verdict with any power or tribunal on earth.

This trial by jury requires that the verdict shall be unanimous. Crude reformers sometimes talk about a two-thirds or three-quarters verdict of a jury; but they are the merest quacks, and know not whereof they speak. Until the constitution of the United States, the constitution of New York, and the Bill of Rights shall all be torn in pieces—until those great privileges that every Anglo-Saxon cherishes, the *habeas corpus* and the Trial by Jury are annihilated, that unanimity will be demanded as the inestimable birth-

right of every man charged with crime. It is the reasonable doubt of every man on the jury that must be removed before the prisoner's life is to be forfeited. Where twelve are sworn, each one holding a veto upon the action of his fellows, while you will, of course, receive information from all sources that shall guide you, from the judge, from the district attorney and from the counsel for the defendant, yet if you have an honest, conscientious doubt, one or all of you, as to the guilt of the prisoner, that doubt is his most priceless possession, more valuable than diamonds, or silver, or gold. The law gives it to him; the law demands unanimity; the law declares that a reasonable doubt must inure to his benefit; and without that humane and sacred principle, how liable we are to have mistakes occur in the administration of justice!

As I have said before, so I repeat, that while you have not the pardoning power, you have not only the right, in passing upon the question of the life or death of my client, but it is your duty to deal mercifully, gently and tenderly. Shakespeare, in one of his immortal plays, "Measure for Measure," thus eulogizes this attribute of mercy, the quality belonging to the white-robed angel who sits on the left hand of the Throne, and who is associated with Justice in the hearts and minds of all who hold in their hands the power over the life or the death of a human being. Isabella is pleading with Angelo, as I plead with you, for the life of her brother. She says:

"Alas! Alas?
Why all the souls that were, were forfeit once;
And He that made the vantage best have took,
Found out the remedy; how would you be
If He which is the top of judgment, should
But judge you as you are? O! think on that;
And mercy then will breathe within your lips
Like men new made."

Angelo says:

"He's sentenced; 'tis too late."

Isabella:

"Too late? Why no: I that do speak a word
May call it back again; well believe this,
No ceremony that to great ones 'longs;
Not the King's crown, nor the deputed sword;
The marshal's truncheon, nor the judge's robe;
Become them with one half so good a grace,
As mercy does. If he had been as you,
And you as he, you would have slipped like him;
But he, like you, would not have been so stern."

I desire, gentlemen, to thank you for the patient attention with which you have listened to this most protracted argument. I desire to thank the court for opening the doors to the admission of evidence, and I am truly thankful that, under the rulings of the

court of appeals and the rulings of his honor here, we have been enabled to introduce a body of proof that presents this case in a new, clearer and purer light. It has been the knowledge of these facts, not all disclosed to the public, which has supported and encouraged the counsel for the prisoner; it is this knowledge which has stimulated us to the exertion and the tremendous labor which we have employed in the defense of this young man, in the unequal struggle between himself and the government, for the preservation of his life.

We hoped that the time would come when the truth might be exhibited and his innocence established. You will pardon me for saying, it seems to me—I may be too sanguine, I may be too hopeful—but it does seem to me that that hour is near at hand. Oh, gentlemen, deal mercifully with this prisoner; let the sword of justice fall, if in your hearts and consciences you believe it should fall; but if you can, consistently with your oaths, do not bring down the gray hairs of that old man in sorrow to the grave; or of that loving mother, or of those relatives who have properly rallied around Edward S. Stokes in this hour of supreme peril!

The prisoner comes to you to-day from the Tombs, where for nearly two years he has been imprisoned; he comes to you with his head prematurely sprinkled with gray hairs; he has already suffered almost the agonies of death; condemned to die, and yet he lives! Spare him if you can. It is the least measure of justice that you can do for him, to send him forth a free man, for even if you do that, he goes out ruined in reputation, in constitution, and broken down in spirit, and in fortune. Now I must yield to the district attorney; and henceforth I must remain silent, except so far as I may deem it necessary to take exceptions, until after you shall have pronounced your verdict.

I will only say in conclusion, gentlemen, that I hope no such sad and melancholy fortune awaits me, as that I shall be compelled to witness a repetition of the scene that transpired in this room, in January last, when, at the gloomy hour of twelve o'clock, on Saturday night, with this room dimly illuminated, I saw the foreman of the jury in the place where *you* now sit to-day (pointing to the foreman), rise and pronounce those fearful words, "guilty of murder in the first degree," and I heard instantly afterwards such a wail of sorrow, such a shriek of heart-bursting agony coming from the lips of that affectionate and devoted sister, that it will remain imprinted upon the tablets of my memory, and be heard ringing in my ears so long as a merciful Creator shall spare my life. Oh, I hope to be able to be present at a scene of a different descrip-

tion, when the glad tidings shall be uttered by *your* honored lips (addressing the foreman), that shall prove that the prisoner's innocence of this foul charge has been vindicated, and that he is no murderer; that shall open the doors of the gloomy prison house, that shall send him forth a free man from this court house, prepared and resolved, as I believe he is, by a life of honorable usefulness, to satisfy you that you never shall have cause to regret that you have pronounced a verdict of true deliverance from the perils of an untimely death upon the scaffold!

Manslaughter; four years' sentence.

THE BUFORD-ELLIOTT CASE.

Tried at Owenton, Ky., July, 1879.

This was one of the most remarkable tragedies and trials in America. Col. Buford, of Frankfort, Kentucky, was a bachelor of inherited rank, ability and considerable fortune. He became involved in a series of unfortunate law-suits, losing not only his own property, but that entrusted to him by his sister. These losses seem to have changed the whole man; he brooded over them nearly twelve years, until the March term of the Court of Appeals, held in Frankfort, 1879, when, after adjournment of court and near the hotel where the three judges were about to dine, he was seen with a shot-gun and accosted by Judge Elliott, who, in a friendly manner, asked where he was going, to which he replied, "I am going a duck hunting; will you go along?" The judge answered, "No, I can't get away." They had then reached the hotel, under the window where Judge Elliott's wife was awaiting him, when, without a sign of warning, Buford shot the judge in the body, killing him almost instantly.

Judge Elliott was a splendid Southern gentleman, a scholar, brave, chivalrous, of generous impulses, a warm and kindly nature, whom the people of Kentucky all loved. He was a great hunter, a fine horseman, and called by his devoted wife her "mountain king."

The sudden killing of such a respected judge, in cool blood, without cause, created intense excitement across the continent.

The press denounced it; the bar passed strong condemnatory resolutions; the pulpit openly rebuked the cruel deed. No lawyer of eminence in the whole region round about, offered or could be hired, to defend Col. Buford.

Judge Curtis, of New York, an old friend of Col. Buford's family, was appealed to and telegraphed his consent to defend him. He left at once, and engaging a horse, traveled sixty days in the saddle in securing evidence of insanity, of which there was a positive hereditary tendency. He practically made the defense and saved his client from the gallows. Throwing all the warmth of his youthful inspiration into an almost hopeless case, the result of his effort was a marvel to the profession.

This is a bare statement of a tragedy that moved the entire country as it had not been moved since the trial of Webster or Beecher. To kill a judge of a higher court, unarmed, in Kentucky excited the highest indignation. It was a blow at the chivalry and pride of the great commonwealth, the home of Clay and Crittenden; and the trial commanded the first legal talent of the state for the prosecution.

The first trial was held at Owenton (after a change of venue from Frankfort), in July, 1879. This was *the* great battle in the case; the later trial in January, 1881, was less interesting, as public sentiment had become dulled on the subject. The chief interest centered in the arguments of counsel, which were unusually eloquent. Two of them are given at some length. In that state the jury fix the punishment of the accused, if found guilty. For the People appeared Col. W. C. P. Breckenridge, John Rodman, and Warren Montfort. For the defense, Judge Geo. M. Curtis of New York, E. E. Settle and Phil. B. Thompson.

THE EVIDENCE.

Of the witnesses sworn the following will show the tenor of the evidence taken. The defense of insanity was proven by alternate experts and laymen, farmers, bankers, merchants and doctors. Among the latter,

Dr. Hurst swore: "I don't believe he ever drew a sane breath."

Dr. Poynter swore: "The Buford family were all eccentric. Tom was excited and wild; he was insane on his law suit."

Dr. Gale, superintendent of Central Asylum, said: "He had a glassy look about the eye; he thought Buford insane. Insanity is a disease. He knew of a similar case at his asylum, who claimed to be king of all the German Provinces. Insane persons rarely commit violence, unless they have a delusion. *Homicide, without*

any cause, is evidence of insanity. Insanity is both a disease and a fact; one whose passions are above his intellect, is to that extent insane."

Dr. Bright believed Buford insane.

Dr. Shouse was of the same opinion.

The strongest insanity evidence was given by *Dr. T. S. Bell*, Prof. of the Practice and Science of Medicine in the University of Louisville: Insanity has always been a favorite study with me, and I teach the science of it from my chair. My opinion has been made up entirely since coming into court. I have listened carefully to the testimony, and find he has for a long time been a sleepless man, and frequently greatly prostrated in mind and body. No one can give any reason for his sleeplessness, except from the state of his mind. I am confident that he had been for a long time prior to the killing approaching insanity. He could not talk of anything but his suit, and it had a tendency to dethrone his mind. I do not mean by dethroned that he was insane on all subjects, but that his mind had lost its rudder. Some of the worst cases ever seen were of this character. The death of his sister, the loss of money, etc., were calculated in his case to produce insanity. * * Frequently lunatics premeditate for a long time the commission of a crime, and carry it out with great ingenuity. For instance, the case of Bellingham, who killed the prime minister because he imagined he had suffered some wrong at the hands of the government. There is a similarity between that case and this, in that Elliott had done no personal wrong to the accused. The Hatfield murder was also premeditated. A man may be insane on one subject and yet display great intelligence on all others. * * The prisoner's expression that he "did not shoot Elliott in the head because he thought it weak;" his smiling after the deed, kissing his gun and waving his hand over the form of the deceased, and many other remarks and acts show derangement, as also his letter to his niece. His sleeplessness in the absence of any physical suffering is the highest evidence of the presence of mental trouble.

The salient points of the testimony were called up, and the witness invariably testified that they evidenced a mind diseased. He would branch off into dissertations upon the physical structure of the brain, discuss the various phenomena indicative of insanity, and back up his theories with that number and variety of illustrations with which his memory is so marvellously stocked.

For the state, and against the plea, appeared several judges, farmers and bankers, ladies and gentlemen. A fair sample of their evidence would be like this:

J. W. Tate, of Frankfort: Have known Col. Buford for about twenty-five years. On the morning of the day that Elliott was killed, saw Buford and Elliott at breakfast. Often saw Col. Buford playing cards with the ladies at the hotel. We boarded at the same hotel. I never saw anything peculiar about him. He was to me always a very attractive man. He is a sane man and knows right from wrong.

W. H. Sneed, city judge of Frankfort, knew Col. Buford for the year previous to the killing. Boarded with him at the Capital Hotel, and saw him nearly every day. The day it was announced a new hearing had been granted him—five or six months before the killing—he said: "I hope my case will fall into the hands of a lawyer." I saw him eight minutes before he killed Judge Elliott, sitting on the steps of the hotel; saw him immediately after the killing. In my opinion I thought him perfectly sane. I regarded him as a man of fine intelligence. When in my court I asked Buford, "Colonel, how did this occur?" He said: "Sneed, I made up my mind this morning after my interview with Cofer. Know the penalty and am prepared for the consequences. Last Monday I would have killed Pryor had I met him, and now his children have saved him." He then said, "Sneed, is Elliott dead?" I said he was, and Buford remarked, "Great God! I didn't think he could survive the wad I put into him!" He then called for his gun, kissed it and said, "Old friend, we have had much sport together; you have done me much service, and I reckon this will be the last." He was very cool, probably cooler than I was, but from my knowledge of his character, I was prepared for it. He did not exhibit any emotion that I could discover. He sat with his head down, and talked in an off-hand manner.

Dr. Chipley did not believe Buford insane. He had made a careful examination, and swore intelligently to the sanity of the prisoner. His evidence was extended and too long to repeat. Dr. Chipley was sharply cross-examined by Judge Curtis, but remained firm. The doctors disagreed, as usual, but stood more for insanity than against it. Over sixty witnesses on each side were examined.

ARGUMENTS OF COUNSEL.

The argument of Col. Wm. P. C. Breckenridge, of Lexington, is a true type of Southern eloquence. It abounds in finely rounded periods, and was delivered with an ease and grace of rhetoric rarely equalled. Considered as an appeal for the honor and integrity of law, it is a fine specimen of excellent English. It is pure in tone,

free from vindictive justice, humane and honorable. The advocate is not lost in the cause. He is as fair in the standard of equity as a just judge. His references to "that Divinity that doth hedge a judge and hold him forever sacred," to "*law assassinated*," "*justice murdered*," "law's administrators intimidated," are excellent. His touching allusion to the beautiful birth-place of Buford. "A place so beautiful, that God created it with a smile and the smile had crystalized on every landscape," is rare. Fancy cannot exceed this picture. If such speeches are not read with a relish, then variety has lost its charm.

Col. Breckenridge is nearly forty-four years old, about five feet nine and a half in height, is strongly built, and a descendant of the old families of Kentucky, eminent as an orator and advocate.

He speaks with great fluency, without notes, and is highly rhetorical as well as impressive in delivery. Something of his happy style may be seen in his recent words of welcome to the Sir Knights, at Lexington, which is a gem in its way. He said:

You come in the power and with the gay apparel of peace, and we greet you in holiday attire and with the sunshine of rejoicing. We mark this day with a white stone. We bid you to the dance and banquet; to our homes and our salt; and we trust that the hours you spend with us will linger in your hearts with only pleasant memories; and when you are gone, we will count time by your meeting as peasants do by holy days, and maidens do by trysting hours.

In the name of that Commandery and all her Knights; and of all the citizens of the old town where these men lived, I welcome you to our homes. The city lifts up her gates to give you welcome; the doors swing inward to beckon you to enter; our hearts go out more than half way to meet you. In this glad month, with the fragrance of the apple blossoms, we mingle the sweeter fragrance of brothers' welcome; and to the melody of the birds we add the music of our hail. With blare of trumpet and beat of drum with waving banner and flowing plume; with glistening sword and prancing steed, we went out to escort you in; and now that you are under our roof-tree, with open heart and extended hand we bid you welcome.

ADDRESS OF COL. BRECKENRIDGE.

May it please your Honor and Gentlemen of the Jury—I am here in the discharge of a professional duty—a most unpleasant duty, most reluctantly undertaken. I am here, as you are, under

the sanction of an oath, being an officer of this court, to try and aid you in coming to a just verdict. I shall try to speak with the overshadowing influence of that solemn thought. I shall try not to distort, to twist, or even rigorously construe the evidence upon which you are to found that verdict. I shall indulge in no flowers of rhetoric, no display of eloquence, even if I were able to make such a display. I shall speak in the simple Anglo-Saxon, and explain to you my view of the grounds upon which you are to perform your duty, which by the choice of the commonwealth and the prisoner has devolved upon you. Nay, you are the commonwealth of Kentucky for the time being; and more, so far as human beings can be given divine power, you represent the divine power, because by the ordinance of God civilized society is given the right to take human life. You are to-day that society, deliberating upon this most solemn of all issues. The parties to this issue are not the dead judge who fell at the door of the temple of justice for an act which he performed inside of that temple, but it is the commonwealth of Kentucky, whose servant and minister he was, on the one side, and the prisoner, who killed him, on the other. I represent, for the time being, that commonwealth whose servant was so untimely taken off, and who comes before this, another of her servants constituted according to her laws, and places in your hands the determination as to whether that taking off was a criminal or simply an insane act.

I represent the law of the land, which asks that it may be enforced and vindicated, not that vengeance may be done, but that law may be administered, and by this precedent respected in all other cases. I represent social order that there may be no violence in the land. I represent personal security, that there may be no intimidation in the state. I represent justice, that its courts may not be intimidated in the discharge of their duty. I represent the body of the people, whose servant has been destroyed because of the discharge of his duty, in that and by your verdict all other servants may know that they stand panoplied by law, surrounded by the security of the inviolable law, and that all who dare to lay sacrilegious hands upon them will receive the just punishment of his crime. I also represent the family of the dead judge, who do not come to ask vengeance at your hands, but that the law, of whom he was a minister, may be vindicated by your action. If I know my own heart, I have not one hard word to utter nor angry word to speak. I have no personal feeling in this matter, one way or the other, so far as the mere person is concerned. I have no feeling in the whole case ; that is, outside of that feeling which

every law-abiding citizen has in this commonwealth. I am simply a member of the society in which this crime has been committed, and an officer of the law. My wife and my children are under the protection of the same law that you are, and I have no other matter involved in it, and am not more interested than every citizen of the commonwealth should be, and it is as a citizen of the commonwealth, whose duty has lain and whose life has been to some extent devoted to a training which should fit the mind to judge of these questions, that I come before you. I simply speak to you in this capacity, and I beg you that if, in the midst of the zeal of advocacy, I should say aught that ought to be unsaid, you will forget it. I desire — in the sight of God I do desire — that the verdict you shall render and the judgment based upon it may be such a verdict and judgment as He will approve. I unite with my young brother that God does dwell in the innermost recesses, and does see, and that you can not hide yourself from Him; and, if I can, shall myself try, and I will appeal to you to act to-day feeling that what we are doing is done not only in the sight of the civilized world, not merely in the sight of this large and intelligent audience, and with the entire state looking on, but we are acting before a higher power and in a diviner sight; so that it may not be said that we have done anything of which we would be ashamed if we were conscious of the presence of that higher power. And if I am not equal to that lofty view—and I may well fall below it—when you go to the jury-room I pray you that you may try to that high conception of duty, and, when you determine your verdict, determine the issue, not only in the view of the people of this commonwealth, but for law and order and justice, and in the sight of this higher power, and that, when you come out of the jury-room, you may feel that you have done nothing of which you may feel that you or your children may be ashamed, or of which you may be ashamed in the sight of God.

It has been said by the distinguished gentleman opening the argument for the defense that this is no ordinary case, and no ordinary criminal. In a certain sense it is true. In a certain sense it is not true. It is no ordinary case, and yet it is to be decided by the ordinary rules of evidence and law. No ordinary criminal; and yet you are to mete out the same justice to Buford as to the loftiest or the lowliest citizen coming before a tribunal of human justice. It is no ordinary case in the whole history of American jurisprudence—nay, in the whole history of English-speaking peoples. Never before but once was a judge killed in the performance of his duty. In all the ages in which our English-speaking

people have developed their history, and formed and perfected their civilization, never but once did the hand of violence dare to lay itself upon a judge. Our fathers and their fathers, and their fathers before them, have hedged about him who was to administer justice with a certain divinity. He represented the foundation stone of social order. In times of civil commotion and disorder sole refuge of the oppressed, the only protection of the innocent, was the court and the officer who presided. While it was pure all forms of corruption might be set aside and reformation take their place. As long as it was independent there was some hope that the future might be better than the present, and so our English-speaking ancestors have hedged about the office of a judge with a certain divinity. Suddenly, in the capital of Kentucky, without preliminary warning, on a March day, the judge of the highest tribunal of the state fell by the hand of violence just after leaving his bench, and the supposed motive was that he who killed him had been disappointed by the decision of the tribunal of which the dead man was a member. It necessarily shocked mankind. For if the bench be not secure, if the judge be not safe, if the shot-gun be the last court of resort, if beyond the revisory and supervisory tribunals is yet the violence of litigants; and if deadly weapons are to make the final appeal, the cause of law and order, the protection of the citizen, the security of the people, are but empty names. It is not merely that John Elliott fell. It was that law was assassinated, that justice was murdered, that the administration of the law became intimidated, that he who decided and he who heard and who had to pass upon cases, had to act not only according to law and according to the long-established precedents of justice, but that he decided it under another responsibility—at the risk of his life; until skill in weapons, accuracy in aim, protection by body guards, and all the other things which accompany times of violence and commotion would become the necessary paraphernalia of courts. My young brother has said that this was followed by a howl of persecution and obloquy, and even by oppression. He has not, it is true, attacked us, but he has put his honor upon trial. He has said that he never heard of a commonwealth's attorney calling a special term of the court to try a murder case. Neither have I. He did not call a special term. The indecent haste of which he speaks was the indecent haste of his honor. He referred to your district attorney in regard to the call of these courts, and made it one of the arguments why you should acquit this prisoner, but that call was made by the judge of this court. Neither Colonel Montfort, nor I, nor anybody

of the prosecution had anything to do with it. And, is it becoming, too, that an argument should be made before you that because the judges of the court of appeals are witnesses, therefore, you will imagine, in some mysterious way, that a conspiracy exists, and find a reason for acquitting the prisoner? And so the gentleman complains when the treasurer of the state obeyed a subpœna of this court, and when the clerk of the court of appeals, and when the members of the police force of Frankfort obeyed, as was their bounden duty, a subpœna of this court. They were but witnesses.

Now, gentlemen, when I heard my young brother's speech, it excited mingled feelings of admiration and regret. When he reaches my age, I will not say my experience, he will find out that, if for no higher motive, it does not pay to denounce witnesses, to take advantage of his position of advocate to say that witnesses swore falsely, and that he will find that it will not help his case. I would not notice it were he not a man of talent and promise, and one upon whom a comment of this sort will not be wasted. He will find that hitting at witnesses by insinuation of improper motives will never produce its effect, and that attempts to belittle men old enough to be his father, and who have attained an eminence such that his wildest ambition can only hope to have his name written with theirs, is not only unbecoming, but unprofitable. But, laying aside his unkind insinuations, there are some points of his remarks that I do not understand. He speaks of himself as the twilight, and some one else, probably Col. Prall, as the starlight, and as some one also, most likely Col. Thompson, as the moonlight, and of the distinguished New Yorker as the broad daylight. Now, if the starlight and the moonlight and the daylight bear any just proportion to the length of the twilight, I think you gentlemen will not have a chance to get home until about time to cut your tobacco. In the old Grecian mythology, where there was some doubt as to where the souls of the departed went, some were said to go to Hades, some to the Elysium and some, as to whom it was doubtful whether they deserved reward or punishment, went into the "eternal twilight of the soul." The speech of my young friend did not quite realize this "eternal twilight," though some might say that it bade fair to suggest this last resort of departed souls in classic times. It is noticeable, also, and well known, also, to carry out the *simile*, that those things which were plain and visible, and appeared bright, became obscure and doubtful in the darkness that the twilight leaves behind. I will not, for so kindly is my feeling to all of the brethren of the profession, intimate that the like result followed the twilight we have seen. But I was

struck with the way my young brother confused the testimony that was sworn to by the witnesses and that which he gave himself. And it would be an odd result, which I have no time to analyze, if somebody were to separate that which was the testimony of witnesses and that which he gave himself. For instance—if I were merely to illustrate—do you gentlemen remember any witness that testified to the fact that poor old Ulysses Turner, whose darkened eyesight led the way to a very early tomb, ever slandered or ever insulted or ever did aught to provoke Col. Buford, save the performance of his duty as an attorney? Was there any evidence here that Turner was guilty of any act except that he was the attorney against him; that he was assaulted by Col. Buford, and for that assault, so far as the testimony goes, no punishment was ever meted out to him?

What are the facts, I have no right to say to you, because they are not proven. But that which my friend and brother says is not only not proven, but I venture the assertion is not only incapable of proof, but that if he is familiar with the facts, could not be established by proof.

And so with a great deal of what he has said, as to his mode of insinuating unkind and improper motives. I illustrate his treatment of Dr. Chipley. I am not the man, gentlemen of the jury, to pass upon the merits of Dr. Chipley. The relation I bear to him would not permit it, for I have been his friend, or rather he was my friend since my early boyhood, and my family and his family have borne a hereditary friendship since the early settlement of this state and the city of Lexington. I was raised to venerate him, and I have learned to love and admire him. Therefore I am not a proper person to eulogize him. But is it becoming to say to you that a gentleman of Dr. Chipley's age, and of his bearing before you, may swear to that which is untrue? That he may falsify in a matter so important, because, forsooth he eats three times a day at the same table with the counsel for the prosecution? That because Gen. Rodman, Mr. Montfort, Dr. Chipley and myself have the privilege of dwelling in a family so pleasant, and that we enjoy, after the labors of the day are over, the pleasant converse such gentlemen of long mutual acquaintance can enjoy in a pleasant family, and that, therefore, because he happens to be at the house that Rodman and I dwell in, because he walks home with and sits opposite Montfort, that he will—oh, no; my young brother is too courteous to say that; not that he is—no, my young brother is too fair to say that he is—but, perchance, he might insinuate to the minds of the jury

that this aged and distinguished man could be induced to swear to that which otherwise he would not swear to.

And he utterly mistakes the temper of the prosecution, so far as I represent that temper, if he thinks I am going to reflect upon the experts who have testified on the other side as he has done. If I can not argue this case but by insinuating improper motives and acts to venerable men, however much I may disagree with them, and however much I may think their views erroneous, then, so far as I am concerned, let your verdict be against the views I present. Lawyer as I am, I have never held, and I pray to God that I may never hold, that the right of advocacy means to wound the feelings, or to injure the reputation, or to smirch the characters of good men, who by the commonwealth are called to the performance of a most disagreeable duty. I recognize no such right of advocacy. I recognize no right of any brother of the profession to say aught of the witnesses other than he would be justified in saying of the men outside of the court-house. I utterly repudiate it in the name of a profession that I love, and to belong to which is the honor of my life; for which no temptation has ever been sufficient to induce me for a moment to leave it. I protest against any advocate using his position to speak disrespectfully of witnesses who, under the sanction of the law, attempt to testify to the truth.

My young brother winds up his speech with a peroration that is touching and handsome. Amid all the range of poetry and prose, amid all the creations of genius, there is hardly any picture more striking, hardly any creation more magnificent, than the character of Macbeth as drawn by the great seer. It was an apt illustration, as it seemed to me, that my learned and cultivated brother found in some of the closing lines put in the mouth of that great character and that he has used upon this occasion. Who was Macbeth? He was a moral monomaniac, whose sovereign came under his roof, and who took advantage of his sovereign to murder him in the silent watches of the night. And the soliloquy is the soliloquy of a moral maniac, who, having murdered his sovereign, usurped his throne, and crowned his temples with the crown of his sovereign, and, after that, the damned spot would never out, and my young, learned and cultivated brother was apt in his illustration. The diseased mind of this moral maniac only fell upon him when the ghost would not down. It was the ghost of the murdered that followed him in all the life that came after that time; and my young friend was correct when he said, this was not the first slayer. The Macbeth slaying was imaginary. The great dram-

atist, the greatest poet and seer, outside of Holy Writ, created this typical murderer—this murderer who had all the graces of chivalry; this murderer who had all the arts and characteristics of the soldier and gentleman, whose lineage was lost amid the myths of tradition; whose career was crowned with the laurels of battle-fields and councils; whose graces were the graces of the knight of the tournament as well as of the soldier of the battle-ax; whose domestic virtues were the virtues of the philosopher and the Christian; who amidst temptations that overshadowed his past life; who amidst temptations that for the moment lost him the control of his will, to forget his loyalty to his sovereign, to forget his loyalty to his own high character, to forget his courage, to forget his hospitality, and in his own house, giving his opponent no show, slew him. And the mind wavered; then the spectre of a disordered imagination came upon him.

My learned young brother set before you the typical moral maniac of modern jurisprudence. He is the very type of the man that now learned experts make us believe are maniacs. He is the typical man of civilization and of history, who allowed themselves, suddenly overborne by temptation, to commit crime; and the annals of criminal courts are crowded with the men of whom Macbeth was the loftiest type of the moral maniac that is presented to you to-day; the mania which acquits criminals in this era is that moral mania that got its entrance into the light in the very dawn of history and found its first type in the first murder; the man who, without motive, killed the man, who, in the very beginning of time, before there was aught to confuse the vision, he stands out as the typical criminal of all time, the motiveless criminal who slew his brother. There were no tribunals of justice; all the world might be his judge. And he had hereditary insanity, too, because, under like temptation, his mother, from whom he inherited his nature, by plucking down the apple, with insane recklessness threw a world away.

I feel that it would be unnecessary for me to make an argument at all of any length were it a case of less importance, but I feel that we are at a turning point in the history of jurisprudence in Kentucky. Perhaps the long, long lane has found its elbow, and we are returning toward the era of peace and order and safety and quiet. It may be that the years of bloodshed, of trouble, of anxiety, the years in which hearts have been broken by the shedding of blood, in which crimes have been so long unpunished, are about to end, and that your verdict may be the turning over of a new page, upon which will be written a brighter history.

I have heard, in this case, a great deal about chivalry—of the scion of a noble family, and all those words which indicate lofty qualities. I will not detract one word of all that may be said of the unfortunate prisoner, but I hail the coming of your verdict as that era when the highest of all qualities, the most chivalrous of all characters, the most magnanimous and noble of all lives, will be obedience to the law; when the idea that the strong right arm and the quick temper, and that desire to right yourself by private vengeance, will no longer be considered the marks of noble blood and chivalrous life, but submission to law, patient obedience to the demands of civil society, unquestioning obedience to the demands of peaceful life, will be held to be the true chivalry of the true citizen; so that hereafter in Kentucky the qualities of manhood which have marked her history, her courage, her magnanimity, will be shown by her obedience to law—a faithful and loyal adherence to civil law—so that peace may dwell in our houses, and the widows may give way to the wives of happiness. And, therefore, I feel that it is not too much to add any efforts of mine to the accomplishment of such a verdict. I have heard a great deal too much about insanity in this case. I have read history to but little purpose if I did not know that there are certain forms of civil life and of action which seem to take on, for the time being, insanity that are merely the exaggerations of the prevailing temper and the spirit of the times. There are persons who are so affected by the circumambient atmosphere, by the spirit that surrounds them, that they do things which seem to be almost unaccountable to a later generation and a different day, and we account them somewhat insane. Virgins will dress themselves in spotless garments of white, and, hand in hand, will, with songs of rejoicing, walk into the waves of the ebbing sea, because, forsooth, the teaching of the Church is that virginity is the highest of all recommendations to Heaven. A Frenchman, in the time of the revolution, will, because Cato and other Romans committed suicide, open the veins of his arms and die amidst the scent of roses and the songs of sirens.

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Now, with these few principles to guide us, let us see if we can find our way through the labyrinths of this testimony, not to inquire what each one of them has said as to this man's mind—the question is not as to what is the nature of this man's mind, but it reduces itself to these simple propositions: At the time John Elliott received in his heart the twelve buckshot put into that barrel by Thomas Buford, was Thomas Buford, first, of such impaired intellect as that he did not know right from wrong; that

he did not know that murder was wrong, and that he did not have control of himself. This control does not mean that sort of control which a man has in the ordinary affairs of life. None of us control ourselves. Legal insanity does not mean loss of the control of ourselves from any other thing than disease. It is not insanity in a father who slaps his child's face in a fit of passion; many a good man does it. Loss of self-control by anger is not insanity. Let me put a case to you. A young clerk has been tempted in a faro bank. He gambles away his own money, and in his pocket he has a wad of his employer's money, and in the heat of that passion, under the seductive lights and temptations, he hesitates. His own money is gone. I do not know that I am sufficiently familiar with the phrases of the game, but he has a plan which he will try. He thinks he can beat the "tiger" on a plan the very next bet. It only requires money to copper the ace to win. He has none of his own money—he takes his employer's money in his hand. The good angel whispers it is not his own. The bad angel whispers that it is only a temporary loan. All the temptations of the place come rushing upon him, and again he touches the money and again draws back. Then, poor, feeble human being that he is, he takes the money out and puts it on a card, and money and heart and reputation are lost, and lost forever. Now, that is not insanity He has lost the power of control; the rudder is gone. Shall it be said that it follows that he is insane? Thus we might illustrate all the crimes in the calendar. The young fellow who taps the till the murderer who slays his victim, each is no longer under the control of his reason. Not because that reason is dethroned, but because each has become more violent and passion is uncontrolled. If our hearts and minds were wholly under control, our reasons even and just, the millenium would be upon us—the Utopia of philosophers, the Arcadia of poets. When these temptations and passions are indigenous in man, why need I speak to men about such things? Our lives are marked by milestones of resisted and irresistible temptations. The unseen records of our lives are written over with the history of successful or unsuccessful temptations. We who are reaching middle life, and who have children about our knees, know how the battle of life is to be, because we have wrestled with these identical temptations, but we are not insane—not diseased. We are responsible to God and to man, and to our own consciences. And if so—I had almost said trickery—with human jurisprudence and human life to attempt to make this moral insanity. That is not the sort of loss of self-control—that loss of control which the law requires as the result of disease. It is when

a man's mind has become impaired by disease; it is when the brain and will-power have ceased to operate by the result of disease. There is a great difference between disease and an outburst of passion. In cases of insanity, the law makes no difference between good and bad, between the law-abiding and the lawless man. Why the language is full of terms describing this condition, but the insanity of the law is the insanity of disease. Fifty-four years ago, in the county of Woodford, and in one of the most beautiful sections of the whole country—a place so beautiful that it may be believed that God created it with a smile, and the smile had crystalized in the landscape—a country where everything is lovely, this man was born. He was one of twelve children. I do not know if he was the oldest, or the youngest, or when he made his appearance. I know nothing of his father, except what this proof developes. I have heard, but I know nothing. I judge from what has appeared that his was a hospitable Kentucky family, like many another that we all know. I know not how many sons his father and mother had—how numerous his connections were on both sides, but we all know in the history of Kentucky and acquaintances there are many persons of that name. Now, out of that large connection, it is proven on his mother's side there was a lady who was insane.

Amid all the numerous Bufords in the present generation—in the generation that succeeded these brothers—in the remote branches—we hear only of these cases that I have cited, together with the three half-witted children of a cousin whose remoteness or nearness is not given. No man on this jury knows how close Abram is to Gen. Buford. The General said he did not know. He was either first or second cousin of his father. How many other Bufords out of this connection, out of this family of twelve or thirteen, had peculiarities, we do not know. One died of fever, one was acquitted of insanity, the third got religion. I don't know who the other children were. We see a specimen of this family in the first witness for the defense. This magnificent physique and strong and vigorous intellect, the brother of him who is accused, for whom I have an infinite pity that passes all expression, and the other brother, a fine type of physical manhood. These two are specimens of a stalwart, healthful and vigorous race. There are three examples of hereditary insanity. Sinclair was guilty in 1836, or maybe Francis in 1836, and Sinclair a little later; and Mrs. Allen's case occurred many years ago. This we learn by no physician's testimony, nor by that of any expert, but by that of General Buford, the only brother absent from home for thirteen years.

Why are not the family here—members of the circle present—and the friends and relatives, instead of getting the mere neighbors here to testify to their general belief concerning these persons? If I might venture the inquiry, suppose any one of those persons were on trial before you to-day for insanity, with the purpose of taking from them their estate, and appointing for them counselors, and sending them to asylums, would you convict them? It would look harsh. Suppose Mrs. Allen, who, doubtless, had all the graces and qualities that mark their family—suppose she was on trial with a design of taking her children from her and incarcerating her in an asylum. There is not enough proof in this case to convict her of insanity. Let us trace this man's career further. He grows to manhood. We know nothing of his childhood. Growing up vigorous, getting a good education—for it is said that he was well educated and intelligent—he grows up without notice among his people, and we do not hear of him until the year 1845 or 1846, when the first revelation of his peculiar nature is that he is a man of strong passion; that he gets angry and threatens to whip somebody who treads on a dog. Is that insanity? The people who go to barbecues and elections and make a disturbance—the men who come into town and make it not only a little exciting, but a little dangerous. Are these men insane? And then concerning this man, we hear a little more from time to time. As living in his county and performing business duties, by becoming administrator, or in some way taking charge of his father's estate. The proof does not exactly develop how, or at least I do not remember it. A farmer in the county, you hear of him in a difficulty on the Fair grounds at Lexington, exhibiting there a certain calm and cold courage, and the power of having the whole of his faculties about him, even when fired upon. And then the next thing we hear is, that he is getting into pecuniary difficulties, and he is being sued, and the suit annoys him; and then we hear of him assaulting the lawyer—whipping the lawyer because the suit went against him; or, as Sam Wallace says, "he was violent in his law-suits and personal resentments." It is not evidence of insanity, but evidence of angry and unrestrained passions. It is evidence of the estimation in which he held his personal honor; not of the high desire to be held stainless in business transactions; not that honor which prefers another to yourself, that makes one liberal in one's feelings with everybody else, and is only strict with one's self; but the honor that resents with blood a tread upon your corns; that resents it as an injury if a man does not smile in your face, and demands

that he is to be killed or driven from the community by the man whom he has insulted.

It is with regard to this kind of personal honor that we hear of him. Now we know nothing about that assault except that it occurred. There was nothing said except that he assaulted Ulysses Turner, the lawyer. The proof does not say whether he was punished or not. I know not. It is not in the proof. The next thing we hear of this man is running for the legislature.

He was defeated, but he ran vigorously. The very gentlemen here to prove that he was peculiar supported him. He stumped the county; explained matters in dispute before the people. After two or three years the gentleman sells out his property and removes to the county of Henry, where he buys a farm. The testimony shows that he owned an interest in the farm at Pleasureville, and that the title was in the name of his sister. We do not know where the money came from. He purchased 400 acres for $32,000 or $34,000. He buys in flush times. The title is thought to be defective. A lawsuit was instituted, and it was held by the court that it had no merit in it. The court decided that the title was one that should have been accepted. Is this enough to make a hero of a man? It is one of the commonest transactions all over Kentucky to buy more than can be paid for. In flush times, when everybody was making money, men bought land and paid for it in part. Then came the shrinkage, and the old order of things began to have sway. Such men became burdened with debt by the hard times that followed. How many of us know, personally, what it means to get into debt for homes when land was worth $100 an acre, and having to pay for it out of the sweat of our brows when it is worth only fifty dollars! These are things which in this contest of money against labor we all have seen. The men who wanted their money on that land were not frauds. I do not know them, and I confess it seems to me that this web of romance and mystery is utterly confounded in the testimony, and I desire to remove it, so that we may see it as it is. He buys a $32,000 farm, pays $22,000 upon it, his notes fall due, the vendor brings suit, times change, interest runs on, accumulating for ten years, purchaser gathers the crops, but thinks it hard that he should be forced to pay the balance due. Is it strange or unreasonable that the creditor should complain? How many such transactions occur in every community? I know how private debt has been like an incubus upon us. But is this cause for insanity?

Are you prepared to say that the debtor who makes an improvident debt and has to pay it, having bought at a high price and

forced to sell low, should take the life of a judge, kill the court for declaring that the debt must be paid and the law enforced, and that this is moral insanity? I do not believe that the jury will do this unless forced to do it.

Now we hear a great deal of the robbery of his sister and her assassination. I do not mean to say anything offensive to any witness. Ten years have passed away, and this great tragedy is committed. These peculiarities are magnified by the tender sympathies of friends—made much of—mountains gathered from mole-hills. And these witnesses, whose attention is called to them and to no others, all else being kept in the back ground, his mode of doing business, thriftiness in other matters—only these things subtracted from the remainder of his life, and how small a part of the fifteen years does it make. Here are forty-five persons, witnesses that he has talked to out of all the multitudes he has addressed, who recollect probably two or three conversations each, but some only one, and these conversations were always hopeful. He believed he was going to win his suit. This being so, how could he talk of the robbery of his sister? She died when it had been decided in his favor—when no robbery had been accomplished. That Colonel Buford talked excitedly is true. That he may have been under the influence of liquor is probable, though some say that he is a temperate man. I have heard much about his affection for his sister, but there is one single thought that sheds a ray of light upon that love. You recollect the old man who kept the cemetery. He said the sister's grave was not only unmarked, but that to this brother it was an unknown grave; that he came to him and asked him to show him where his sister lay, and that during the time that he loved his sister so well he never visited her grave, and had actually forgotten the place where she lay. Now, it is a fact that the sane and insane are alike in their love for the abode of the dead; that they do not cease to be dear to us when laid in their resting place. It is one of the signs of insanity that the really insane are not to be turned from the graves of those they love, while the sane, returning to the tide of human affairs, are separated from them to a great extent. And the suicides that have been committed because of the dead have been more often committed on their graves than anywhere else. Amid its sorrows they commit suicide, which shows that they can no longer live separated by the grave from those they love. It is the sane who turn to the affairs of life, who become absorbed in sowing and reaping, in lecturing to societies, in running for the legislature, who are ambitious and thrifty, who leave the graves of those they loved unmarked, and forget

where the loved one lies. I do not mean to say that Buford did not love his sister. I mean to say that the love he bore her was the same controllable affection we all have who are sane. It was not the romantic, inexplicable love of an unsound mind.

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There may be an impression that a man can deliver speeches on the spur of the moment. This is not so. Men who speak acceptably are men who labor. They read and study. Now, this gentleman, for two years, spoke acceptably upon a variety of subjects. To do this he had to read, analyze and exercise all the faculties of the intellect. He had to exercise his mind as to what was best to be said and reject that which should be unsaid. And you tell me that the man who does this for years is insane? But this is not all. While he was delivering these lectures through the community, and he was invited to do so by his fellow-citizens, he also played chess in Eminence and in Pleasureville, and was prominently connected with the business transactions of the county. He was a leading, active, vigorous, intelligent citizen, discharging all the duties of life around him in a manner that made him respectable and influential. This man rode upon his horse talking and gesticulating—and I doubt whether there is a man in the sound of my voice that does not talk to himself—said Mr. Montfort. If I am by myself, I can choose my company, and always talk to myself. It is known that two of the greatest orators in American history are Patrick Henry and Henry Clay. They rarely wrote their speeches, but composed them by walking up and down and speaking to the air. There is a walk in Lexington owned by the Kentucky university, where Henry Clay walked up and down, deliberating those great speeches that shook the world and cemented the Union. The speeches of Patrick Henry were made in the forests of Virginia, where he gesticulated and talked at the top of his voice, the neighbors often listening to those great sentences that fired the hearts of the people. We adapt our habits to the people with whom we associate. Now, you recollect that Col. Buford is a bachelor, and it is a generally accepted theory that nobody can live to fifty years of age without contracting habits of life which are peculiar to himself. We who are fortunate enough to marry, and to marry happily, have a constant outside pressure upon us. We are surrounded by influences that break in upon any tendency to peculiar habits. We are brought within the range of domestic influences of a general and diversified character.

Now, this man is brought up in this way, and he comes to the

year 1878. He loses his suit. He has been a violent man in some respects. Along during this twenty or twenty-five years there is another series of events that have transpired. He lives in Kentucky; is surrounded by Kentucky influences; he reads Kentucky newspapers; he goes to Kentucky court-houses. There he finds the law—the criminal jurisprudence—powerless. And, gentlemen, of all things that are weak, the weakest is the criminal law of Kentucky. Of all things that are contemptible, the expression of the criminal law of Kentucky is the most contemptible. And so this man with his passions growing, living his bachelor life, and disappointed in that life. His passions grow because uncontrolled. He finds that there are men around him humbler than he—men who are not the scions of honorable families. He finds the law powerless, and he feels that so far as this life is concerned, that there is little or no punishment for the criminal. Well, these things go on, and the law decides against him in the lower court, and the sheriff comes to put him off. Now, bear in mind, this is an insane man. Let us see what he does. We have gotten to the point where—according to my venerable and learned brother, Dr. Kennedy—an explosion would be produced. Now, I am frank to say that I do not know what he means by an "explosion," but at any rate he says it would produce an explosion, and an explosion is generally understood to be a plowing to pieces. Well, now, this thing happens; the sheriff goes to put him off. Let us see if he goes to pieces. As I say, he loses his case in the Fayette circuit court, and a writ of possession is put in the hands of the sheriff. The sheriff goes there, and what does he do? He says to the sheriff, "Don't take these things away to-day; I will go to Frankfort and see my lawyer, and see what I can do about it." The sheriff says—the sheriff at whom my brother sneers; but my brother seems to think that being an officer of the commonwealth and a witness for the prosecution is sufficient grounds for doubting his honesty—the sheriff says: "Certainly, Col. Buford, I will give you time." Well, he goes to Frankfort and comes back without doing anything; and when the sheriff goes there again he says: "Don't execute the writ; I have made arrangements to give bond." But he don't. The sheriff goes back, and he says: "Wait; I will consult my lawyer." He then goes back and tries to get a *supersedeas* bond, having said to the sheriff, "I will make arrangements to give a *supersedeas* bond. Then the sheriff comes again, and he says: "Don't turn me out; it is inconvenient to my sister, and if you will not turn me out until next Monday week I will give you my word and honor as a gentleman I will go

out." The sheriff replies: "Certainly, Colonel, if you give me your word and honor;" so he gave the sheriff his word and honor. Well Col. Buford does not execute his bond, and he does not go out. Now, it may be argued that because he did not go out according to his word and honor given that he was a crazy man. But I hardly think that in this great state of Kentucky it is a symptom of insanity that a man does not keep his word every time. That would be carrying a joke too far, to say that every man who does not keep his word should be acquitted of murder on the ground of moral insanity. I am rather of the opinion expressed by the old English judge, that it is necessary to know the amount of insanity required to make a man liable. That is drawing the line a little too fine, putting a man's life at the mercy of every gentleman who does not execute his promise. It makes the percentage of gentlemen entirely too large. Well, he does not execute the bond, and so the sheriff meets him and rides with him to his house. There is no sign of insanity shown then—no peculiarity, and no anger. When he gets to the house, he goes in and gets his double-barreled shot-gun. Then he explodes, according to the theory of Dr. Kennedy.

He says to the sheriff: "You and your son had better get out of here. I am not going to move out, and I will die in the attempt to remain."

Up to this point there is certainly no sign of insanity, until the sheriff appears with his *posse comitatus*, and Buford says "I will die first."

Now, gentlemen, if you will go to the mountains of North Carolina or Georgia—I won't say Kentucky—but I think if you would go to some of the moonshine districts in this state, where the moonshine dew is distilled, you will find the attempt of a United States marshal to execute his duty as much as his life is worth. It may seem strange and unaccountable to you, but it is a fact that no man runs for the office of deputy marshal in those districts.

Gentlemen, that is not insanity; it is lawlessness. The law has been for twenty-five years growing more and more powerless; that law which has been acquitting men of deeds of violence; that law which has made Kentucky a by-word all over this land.

The defense say that he was a lunatic, and could not control himself. Did not he control himself when he made that contract? Did not he know what he was doing? Gentlemen, he did control himself, and the court of appeals decided against him, and he went out. He went to Frankfort. Now, mind you, the time for another explosion had come; he had exploded one. The time had come

for him to execute the contract. He executed it, and then he went to Frankfort and filed his petition for a rehearing, and it was granted. Now, this state of facts presents one curious question to you. Here is a gentleman who is insane, whose insanity is immediately cured by his petition for a rehearing being granted. Now he's sane, and now he's insane; and, gentlemen, insanity is a disease of the brain, and you might as well talk of a consumptive having sound lungs as a man being insane with a sound brain. Here is a man who is perfectly sane when his lawyer got a petition for a rehearing for him; but when the case was decided against him first, what does he do? He goes up armed to Frankfort to board there. His lawyers file a petition for a rehearing, and when that petition is granted what does he do? He associates himself with Tom Jones. He plays cards with Tom Jones, a very good player. I don't know how good, but I know when his honor, Judge McManama, asked him if he was a good player, he replied, "I am good enough to beat you." I don't know how good that is, but if his honor knows as much about cards as he does about law, he is a most excellent player, and if he runs cards as well as he does a lawsuit, he is a pretty hard man to beat. But, at any rate, Buford plays cards, goes fishing, is agreeable to the ladies, and associates himself with Dick Tate. Now, it is true Mr. Tate is the treasurer of the state, and may not be believed. My young brother seems to think that all that is necessary to prevent a fellow from telling the truth is to be an officer of the state, from the governor down, although, by the way, I don't know what the governor has done. All that he did was that, as soon as this tragedy took place, he called out the militia to protect this man by the arm of the law from violence, and he said that whatever this crime has been—whether a crime or not—he must have the advantage of law. For myself, I am frank to say that it should be a matter of congratulation with the accused and his counsel, as well as all good citizens, that in the midst of the public indignation, when at the perpetration of such an outrage mob law might have taken place, the governor prevented that stain being put on the escutcheon of Kentucky, and said that this man should be tried like any other citizen at the bar of the circuit court, just as if the man killed had been the humblest citizen of the commonwealth.

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I ask you, gentlemen of the jury, where you would go to find the criminal. Suppose that on the Monday of his walk around the penitentiary, deliberating whether to kill Pryor or not, he had met Elliott by himself, and with no other eye but the eye of God to

witness the same, he had put these twelve buckshot into the heart of that upright, loyal judge, and then had gone off and put his gun where it could not be found, and that the body was found with the charge of buckshot in it, would any man doubt where the man that committed the murder could be found? It was the result not of insanity, but of the premeditated determination. Then that brings us to the time. The law says "at the time," on Saturday (that the opinion was rendered on Monday), that gun was loaded for the purpose of killing Judge Pryor, who had decided the case, and this man started out to find Judge Pryor. Dr. Bell says that in this whole case he can find no evidence of intellectual insanity. This man knew what murder was. This man knew right from wrong. This man had educated his fellow-citizens on the stump and the rostrum and in the lecture-room. He himself was deeply read. Now he starts out to find Pryor, and he would kill Pryor. If he had killed Pryor the argument would be just the same, that he could not control himself. If he had met Pryor he would have shot him. We know he could control himself, because he told us the operations of his intellect. He says: "I went and thought about the matter; I thought Pryor had a house full of children who had done me no harm, and for their sake I will save him." The intellect is composed of two qualities, so far as we know—the power to conceive and the power to execute; the power to make up plans and the power to choose between plans. The power to conceive was shown by his purpose to kill Pryor; the power to choose was shown by his determination not to kill Pryor.

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He told Sneed that after his interview with Cofer he determined to do what he had done—to kill Elliott. He took the walk and made that determination. He gave that umbrella back; he went into Campbell Steel's room, and no insanity was discovered; talked to Sam Cox. He said to Steel—now, mind you, he had determined to kill Elliott—he said: "Make up your bill against me up to-day, and I will pay it;" and here he showed forth his reason and his memory. "I think," said he, "I owe you about forty-one dollars."

Gentlemen, the details of this tragedy are as marked, and are as cool as any tragedy that ever occurred, and if preparation and coolness and deliberation are any marks of crime, you track it through that whole morning when he wrote that letter he showed his reason. He said: "I am about to do a thing in which I may lose my life, and I make this my last will." John Elliott was known to be a brave man. His life was one long exhibition of physical and moral courage, a life of uprightness from his mother's knee until

his body was returned to mother earth; a man who had faced the dangers of life on the battle-field and had filled every position of life from the humblest that an humble man could fill, to the highest that a gratified state could put on him, and so Buford felt that something might happen to him; he might think that, in the rencounter, some accident might befall him; that Providence might interfere, and that old maxim that the "biter is sometimes bit" might find an example, and so he therefore put it, "Whatever may happen to me." Or he might have thought that the death of such a man, that a tragedy so awful, a crime so conspicuous, might be followed by summary retribution; for, in this state of Kentucky, while the law was powerless, while juries brought in verdicts of acquittal, criminals sent out of court-rooms without punishment, were sometimes hung by mobs; while the law is feeble, the hand of vengeance is sometimes strong. The very bridge at Frankfort has sometimes had criminals hung from its beams, and in Henry county, next to it, and in Owen county, on one side of it, and in Shelby, on the other side of it, there have been mobs, who, after the law had proved powerless and crime had gone stalking through the land unpunished, had taken the law into their own hands and hung the victims. He might well believe that if he committed such a tragedy he would be punished out of hand at once.

Insanity is a disease; and here we have the spectacle of a man who, at nine o'clock in the morning, sane or insane, not according to the internal workings, but by external communications; here is a man who could be sane or insane in three minutes; sane or insane, as he goes out of Cofer's house, not according to disease as he went in, but according to the communication that Cofer would make to him.

Gentlemen, there is not a paper that is laid on the table of any reading man that does not contain the history of crimes committed having the insanity of the criminal as their defense. A man goes to a beautiful woman and asks her to be his wife, and says to her, "Come to my arms, my own stricken deer," and she refuses; and he immediately makes a stricken deer of her, by shooting her. This has got to be so common that I am often very glad that I am not a beautiful woman and a poor woman, who is not as pretty as some other woman, her beauty gone by the cruelties of some brutal man, who wants to get rid of her, and he gives her arsenic. These men, they say, are morally insane. The papers are full of this sort of insanity; just insane enough to execute the promptings of their evil hearts and gratify their passions, or ambition, or desire, or purpose. Now, then, when Buford went into his room, after hav-

ing talked with Cofer, and after having made the resolution, as he said to Sneed, he writes this letter, and he goes out, and we follow him step by step to the tragedy. After he goes out, he meets Cox down town somewhere, and he talks about going to Henry county; he talks to Steel, and in a few minutes Duvall comes along, and in that manner of his Buford said that Socrates, before drinking the hemlock, said there was nothing so desirable to his heart as to preserve his personal honor. Duvall said he was a great fool in the state of Kentucky, to take that when he could get good Bourbon.

Col. Breckenridge then proceeded to detail all of Buford's movements from the time he rose on the fatal morning, until he met Judge Elliott at the ladies' entrance to the hotel, and killed him, and said:

Gentlemen, I say to you that if I could bring the body of the dead judge before you, with his slayer gazing on that kindly face, I would appeal to you for your duty. Kentucky comes and asks you that you will do justice, and justice that will be a lesson forever. Two hundred years have passed since a judge's life was taken. Kentucky comes and asks of you such an example that two hundred years more shall pass; she comes and says to you, "I want the law to protect the ministers of the law; I want the juries to see to it that the law is ample to protect my servants and your servants; I want an honest and intelligent jury, gathered from the body of the community, to stamp with their verdict the pleas of maudlin sentimentality, of infected philosophy that a man who commits crime is insane. In the name of your consciences, as God gives you strength, do your duty, your whole duty, your full duty, and if, by doing it, this man's life falls a victim, if the verdict which your consciences require you to give, takes from him that life, he will at least owe you what he did not give his victim. He will owe time to you in which he can make peace with God, and by that death retrieve the death which he inflicted upon a judge, and may God give you strength to do the right.

JUDGE CURTIS, FOR THE DEFENSE.

Ex-Judge Geo. M. Curtis, senior counsel for the defense, is now about thirty-eight; well built, above the medium height; with broad shoulders, large forehead, and smoothly-shaven features, like Napoleon Bonaparte, whose likeness he strikingly resembles His eyes are black, and hair the same, fast turning gray; his voice is pleasant and persuasive. He has been a member of the New York Legislature, and served on its judiciary committee at the early age of twenty-one; was six years Judge of the Marine Court of New

York city, and declined a nomination to the Superior Court, other positions, and for Congress, (the last a happy thought). He is counsel in the famous Leslie will case, involving a million or more of money; was attorney for Helmbold in Philadelphia, in the three years' contest over his alleged insanity, and succeeded in clearing his client. Insanity cases are largely his specialty.

Owing to a previous friendship with Col. Buford's family, and the prevailing prejudice that prevented the employment of local counsel, Judge Curtis was sent for, and at once started for Frankfort, where he procured a horse, as before stated, and rode through the whole surrounding country sixty days in securing evidence of Buford's hereditary insanity, which was of a positive character.

In an unfriendly country, with a deep-rooted prejudice, he built up a strong defense from the very foundation, and through his skill and adroitness the life of the defendant was undoubtedly saved. A striking example of the wonderful will-power of a single man, inspired with the fire of youthful genius, a love of fair-play, and the untiring energy of well-directed work.

His eloquent argument, delivered without notes, is so closely condensed that nothing more could be omitted and preserve its connection. The genius of the address is its appeal to the chivalry of the South, the inherited qualities of the defendant, whose career he traces through years of trouble and disappointment. The art of an advocate was never more effectively used, and the result is a marvel to the profession.

He held close attention throughout; his theory of defense was insanity, the growth of years, sleeping like a serpent in the blood since, in infancy, he first opened his innocent eyes in his mother's arms. At times latent, at others wild and impulsive, sending a rudderless mind on a perilous voyage to eternity, *till reason had not left her throne, but unreason had crept up and jostled her on her seat.* Many such rare and beautiful word pictures are contained in the argument. The genius of his argument in this case was in his eulogy on the character of Kentuckians; his exordium was admirable. His touching reference to the early love of Buford moved all hearts within hearing. It is an eloquent appeal for human life. He held his audience and jury from the moment of commencement to the conclusion, and was named the Napoleon of the defense.

It seems impossible to omit even a single paragraph from the two speeches in this trial and preserve the connection of the scenes and incidents which are one and inseparable. The arguments are brief for a case of such magnitude; and this one was made under

an extremely adverse pressure of public opinion, an opinion so strong that some fifteen hundred men, secretly armed, attended it, and many assert that any serious mistrial would have resulted in bloodshed, to prisoner, counsel and jury.

JUDGE CURTIS said:

If Your Honor please and Gentlemen of the Jury—It is fit that this sad and solemn occasion should be softened and graced by the divine presence of the fair. To what spot does mercy, as typified in the form of woman, so readily repair as to the scene of misery and anguish? Bulwer has most truly and beautifully said that there is no government that can perish, there are no institutions that can be destroyed, if the patriotism of man be as true and sincere as the silent loyalty of woman's mercy and affection. I rejoice for myself that this trial has had so many amenities, and that it has had so few asperities. And I can say from my heart with the distinguished orator of Kentucky, who opened this discussion on the part of the prosecution, that at the close of perhaps the *cause celebre* of all generations of jurisprudence, I am conscious of possessing no thought, no sentiment, no emotion of bitterness, against any person whomsoever. I recognize in the *personnel* of the prosecution the same purity of sentiment that we claim for ourselves, and when in the zeal of advocacy I descend for desperate purposes to assail the motives of professional brethren engaged in a cause, may my tongue cleave to the roof of my mouth. I believe, and I say it cheerfully, because it is truth, that this cause has been conducted by the prosecuting officer, Mr. Montfort, with the dignity, the decorum that belong to a gentleman, and with the learning and zeal that belong to an officer of the state, and I predict to you that when he comes to address you he will not permit the zeal of his advocacy to take him over the line of the evidence as proven, and he will not substitute the inventions of a gorgeous imagination for the sworn declarations of testimony.

I need no apology for appearing before a jury of Kentucky; but it may not be improper for me to say why I am here. The nephew of that unfortunate man, whom it is my Christian privilege to defend, and myself were bosom friends. He was the friend of my youth. He was the friend whom, in all his manly beauty, whom, in all his integrity of character, in all his loyalty of friendship, I loved. He, gentlemen, has passed away. He sleeps in that beautiful city of the dead, the cemetery at Lexington, wherein, greeting the eye of every beholder, that monument to Kentucky's greatest statesman, erected by pious and grateful hands, rises, as Webster

says, till it meets the sun in his coming. It was in the name of that friendship, and it was for the love that I had and I bore for the staunch friend of my youth, that when the application was made to me I came here to espouse the cause of this unfortunate man, whom, really, gentlemen, God and not you ought to judge.

Colonel Breckneridge said, among other things, that one of the reasons why you should find a verdict for the commonwealth is, that you must put down the *code duello*, that you must put down the reign of lawlessness in the state of Kentucky. Now, I undertake to say that there has never been a community so maligned and abused in that regard as this same commonwealth of Kentucky. I have been in the midst of this people for over three months, and while my professional engagements in times past have led me into many states of this Union, I have never met a more orderly, a more quiet, a more peaceable, a more inoffensive population than that which lives in Kentucky to-day; and from the moment I came over the Ohio river I have received nothing but hospitality and kindness, and I hold the warm grasp of its hand in mine this minute. And is it not strange that a person like Col. Breckenridge, a typical gentleman of Kentucky, whose family Kentucky has loved, and for whom she has done so much, should endeavor, for the mere purpose of carrying a verdict in the county of Owen, to emasculate that sentiment of chivalrous courage, which, after all, when it disappears carries with it that time-honored chivalry of Kentucky? This I know, that when the *code duello* was in existence a man was careful of what he said, what he did, what he uttered, jealous of the rights of others, solicitous for the honor of women, discharging all the duties of citizen, neighbor and friend. It is that true old school, so typified by Henry Clay and John Crittenden; and while I believe as firmly in peace and order, in the maintenance of law and authority, as any man within the limits of this state, still, far distant be the day when that true sentiment of chivalrous courage which has existed in your veins and in the veins of your fathers since the days of Daniel Boone and Rogers Clarke shall disappear as the heritage of this great and God-favored land.

WHO IS BUFORD?

Gentlemen of the jury, you will remember that General Rodman took occasion to put the question to you, "Who is Colonel Buford, and has his life been consistent?" Yes, his life has been consistent in sorrow; his life has been consistent in resistance to the machinations of his enemies who have succeeded in despoiling him of his property, who have succeeded in this day placing him within the

awful shadow of the gibbet. You will remember that many of the witnesses from Woodford county told you that when he was a young man he was kind, humane, brave, determined and benevolent. You will also remember that many of the witnesses from Woodford county told you, even those summoned by my learned brother on the other side, that there was a sentiment of Christian faith and belief in his soul, and, strange as it may seem, when you contemplate the near close of his life, its awful character, there has been running all through it a sentiment of deep religious sensibility and accountability. He believed, in the language of one of the witnesses, to use his own statement in that regard, in the self-evident truths of Christianity. He believed in those manifest beauties and conceptions of the Sermon on the Mount. He loved to read the Book of Job, which Daniel Webster declared, as an epic poem, to be superior to the Iliad or Odyssey of Homer. He delighted in reading the Psalms. He rejoiced in the Book of Revelations. Now, gentlemen, with such a character as that, with such an education as that, with such a sentiment of christian belief and profound faith engrafted upon it in early life, he could not, without some great mental, physical and moral disturbance, suddenly change in character and in the mode and form of life.

THE DUTY OF THE JURY.

I ask you, gentlemen, to remember that you are not only responsible to the law of this state, that you are not only responsible to the state of Kentucky, but that you are responsible to your God, through your oaths, and to Christianity. You must remember that it is by and through Christianity that the great lights and sciences have been diffused through the world. Civilization bursts its way westward through all the earth, returning to the place of its origin. You are not sitting here as the blind instruments of vengeance. You are not sitting here as the supple tools of the state. You are sitting here possessed of the highest attributes of man, those of jurors. You hold a human life, and perhaps an immortal soul, in your keeping. Therefore, I pray you, I beseech you, at the outset of this discussion, to be calm, considerate and patient, and not to be carried away by any sentiment either of frivolity on the one hand or vengeance on the other. I say, on such a solemn occasion as this, when a man's life is trembling in the balance, and you hold the scales, how grotesque, how mean and dwarfish would it be in me to endeavor to excite you to merriment or laughter. I am addressing twelve jurors of the county of Owen, in the grand state of Kentucky, and I am speak-

ing to them through their consciences and their understandings. I am not addressing a political auditory. While I crave the espect of all, I care but little for the applause or censure which a laugh, a piece of merriment may excite. My business is of a more serious character; yours is of a more serious character. This is not the place to dance fantastic in the presence of death. This is the place, and this the occasion, invoking Almighty God to enlighten your understandings, to consider carefully, dispassionately, deliberately, this testimony, and then say on your hearts and your consciences if the state has made out a case. As I construe that instruction of the court, this prisoner is not guilty if he were an insane person on the 26th of March of this year. He is charged with the willful murder of Judge Elliott. Well, of course, the allegation of willful murder carries with it the allegation that he had a knowledge to distinguish between that which is right and wrong, and had power of will — had control of the will sufficient to govern his passions in relation to the deed. I concede to you now, as I did in my opening on the other day, that if Thomas Buford, on the 26th day of March, 1879, was a sane person, then beyond controversy he is a guilty man, and should be found guilty under this indictment; but if he be an insane person, and if you, carried away by passion and clamor, as many juries and jurors in similar cases have been, on both sides of the water, you consent to the strangulation of an insane person, what, then, is your destiny? Ah, preferable to be Buford before the throne and the judgment seat, because when he appears in the presence of his Maker for judgment for deeds done in the body, the omnipotent God knows that his reason has been beclouded, that his mind has been benighted, and that the deeds which follow have been the result of the affliction with which God has seen fit to visit him. But you, drawn from the wealth and the respectability of the county of Owen, selected for your intelligence, selected for your integrity, with no cloud on your minds and no mist covering your reason, what will you say when your brother's blood is demanded of you? Why, "I was carried away with the eloquence of Colonel Breckenridge; I was overcome by the fervid denunciation and vindictiveness of General Rodman." Will that be an excuse, either to your consciences or to your Maker? Gentlemen, God giving me strength this day—I humbly pray his aid—if I do not prove to you and to the intelligence of this country with mathematical accuracy that Colonel Buford is insane by this testimony, then it is because I do not understand the use, the application of the English language. I am aware that a great prejudice exists

against this defense. Why is it, and why should it be? Where one person has escaped — remember this! — punishment by the unjust plea of insanity, seven insane beings have been launched into eternity. That is the result that the careful statistics of the world and science give. And is it not awful, when you contemplate it, that the percentage of human life where that plea has been interposed has not been on the side of mercy, has not been on the side of charity, but has been on the side of death and strangulation?

General Rodman told you what is manifestly absurd, the other day, that fifty years ago such a defense as this would have been kicked out of a court of justice. Why, over a hundred years ago Lord Mansfield repeatedly directed verdicts of acquittal in cases of insanity, and your honor must remember in your extensive reading, the catholic view taken by Lord Kenyon in the Hatfield case, where he says: "Gentlemen, even in a question of doubt, where the scales are oscillating, let them turn to the benefit of the prisoner, and acquit him; because," said the great judge, "it is a dreadful thing to deface the image that God has made; it is a terrible thing to destroy the temple of an immortal soul; it is a dreadful thing," he said, "to put ourselves below the level of the savage." And one remarkable thing in the treatment of the insane—remarkable because inexplicable, and which is immortalized by Fenimore Cooper in one of his novels—is that the greatest charity, the greatest Christian charity that has ever been shown to the insane, the mentally afflicted, has been exhibited by the North American savages, the aborigines of this country. It was the North American savage who treated the insane as one protected by the divine blessing. And shall we, in a Christian country, with the light of the Bible illuminating the land, with school-houses and the pulpit with their influence, that tends to soften and mellow the human character, shall we treat those mentally afflicted, those who seem to be punished for some inscrutable reason of God, shall we treat them in a manner inferior to the savage of the wilderness?

"Why," said General Rodman, with his wave of the hand, said General Rodman in his tone of command, "kick this defense out of the courts of justice, and kick out of it," he said, "the venerable Dr. Bell." Now, gentlemen, it is true, as that magnificent lawyer and true Kentucky gentleman and most eloquent advocate told you on the other day, Col. Phil. Thompson, on whose strong arm we have leaned, up to whose strong mind we have looked for counsel and advice, and on whose brave and true

heart we have ever relied—while it is true as he said the other day, that this theory of insanity has made gigantic steps in the progress of the nation, still it is like the progress of everything else that is decreed in the future to mark God's plans and wishes to man. When Christopher Columbus told the king and queen of Spain that by sailing westward there were other worlds to discover, and new realms for Castile and Aragon, the fanatics of that day sought to burn him at the stake. Why? Their construction of the Bible and its teachings, what they knew of the astronomy of the ancients and of that taught in the Scriptures was that the earth was a plane, and any one who suggested a different idea, any one who believed that this was a spherical planet, revolving around the sun, flying in the immensity of space, was a heretic to God and his religion. Columbus persevered, and a new world was given to Castile and Aragon, and a new outlet and a new channel of development for the ideas of man, of the progress of science. Take the more recent example of Edison. When he took one of his instruments to Paris and from Paris into the mountains of France and exhibited it to the peasantry, they believed that if he was not Satan himself, he was his embassador. And yet, see what he has done for mankind. By the telephone, with its connecting wires, you can stand in the city of Owenton and converse with a man on the banks of the Ganges; by his electric light he proposes to give to the rich and poor a better, richer and greater light than was ever given before, at much less expense. And yet contemplate, that if he had lived a hundred and fifty years ago he probably would have met the doom of witchcraft. Remember now, even in comparative days of enlightenment, the father of the Baptist religion, Roger Williams, was forced to seek an asylum in Rhode Island. I tell you, gentlemen, as Galileo said, "the world moves."

The unbelieving endeavored to make him take that back. They subjected him to the torture. They succeeded awhile in overcoming the resistance of the venerable old man, but the moment the bands of torture were removed he raised his eyes to heaven and exclaimed: "The world does move." So it is with this science.

But, gentlemen of the jury, before I come to the discussion of the main issues in this case, before I strike the main line of battle of the other side, I want to drive in the pickets and the skirmish line, because I have found in the trial of cases, that where that thing is neglected in the outset, some few things may escape the memory of the advocate, and bear fruit in prejudice to his client.

[Counsel here answered Gen. Rodman's speech in detail as to Buford's insanity, and especially as to his trouble with Turner, which turned out to be a simple assault with a cane, after Buford had been first assaulted !]

Now about that affair at Lexington, I am going to call your attention to that for another purpose. Is it any argument that Tom Buford is not insane that he is a brave man ? Is it any argument that he is not insane that he is a person of dauntless and distinguished courage ? The affair at Lexington was begun by Thomas, who, after firing two shots (Col. Buford not being able to return the fire from some defect in his cap or lock), finally received the fire of Col. Buford, who refrained from firing at the outset, as you will remember, and as I have stated, because the lady was passing behind Col. Thomas, and he felt that possibly he might endanger her life. Behold the man standing on the brink of a possible eternity, not knowing how soon his own life might be taken by his adversary, who paused because he thought it possible that he might take the lady's life. Is that courage or is it cowardice ? I say it is in the proof that he was a man of dauntless courage, and with those peculiar views of social duties and social honor that belong to the people of Kentucky. The very manner in which he killed Judge Elliott shows that he was not in possession of his senses. That man there, now fast approaching dementia, was a man who, instead of seeking advantage in personal encounters, and who was never engaged in any but were forced upon him, gallantly gave advantage to the other side. That is the history of his life, and if he had been the Tom Buford of twenty years ago, even if he had resolved to kill Judge Elliott, he would have sent him word—would have told him to be on his guard. Gen. Rodman said, sneeringly, trying to prejudice you against the man —Rodman forgot that you are his equals, and the equals of any in the world—that we are trying to create a distinction between Buford and an ordinary citizen. Because he is a descendant and scion of a noble house, is that to his discredit ? Is that to be tortured to his disadvantage ? He is descended, like many of you, from old Virginia ancestry. You remember that in the early history of the state that portion of Virginia that is now known as Kentucky was explored and peopled by daring and adventurous men, like Daniel Boone and others, and it is from the character of those persons—their devotion and their sense of honor—that you have bred up in this state that race of brave and noble men and beautiful women that have distinguished Kentucky for a hundred years. And is it to be said that it is to his discredit that he is a

scion of such ancestry? It strikes me that those are the arts of advocates that are appealed to only in desperate extremities. They do not belong to that higher, that nobler, that broader and more catholic view of the practice of our profession.

I come now, gentlemen, to discuss that which is exceedingly painful to me, because it is the womb of all this trouble—the source and origin of the hundred calamities that have fallen upon the devoted head of Thomas Buford—the source and origin of that tragedy that has resulted in the death of a judge of a court of the highest jurisdiction—of *dernier resort.* And it is natural that, in approaching such a subject, I should feel its delicacy and importance, and that at the same time I should be agitated in contemplating it. Way up in the county of Henry—and some parts of it are as rich as Woodford and Fayette—is this estate, the litigation over which brought Buford into the Court of Appeals, and the decision of which litigation, perhaps, brought Elliott to the grave and this man within the shadow of the gibbet—this proof shows that some time in 1860 odd (forget the year), every dollar that Buford had—every dollar that Mary Buford had—was invested in this estate. Follow me, and I believe I shall make it as simple as the story of a primer, and if there is a man on that jury when I get through that statement who does not agree with me, that however unintentional it was on the part of a judge of the Court of Appeals, that the result was to despoil Buford and his sister Mary, to deprive them of the money they had invested, then I have very much mistaken your intellectual caliber. One fact stands out—that money was paid in there and it never came out. One fact stands out—that the money paid in there represented a modest fortune. It was their all, and after they had bade adieu to that money, they were paupers on the face of the earth. How were they despoiled? Let me show you. Some few years before that time one John N. Smith died in the county of Henry a very rich man, and left a will that operated as a deed of trust, and in this will he left to his granddaughter, Miss Lizzie Roland, real estate and a certain sum of money, the principal of which she was not to receive until she was twenty-six years of age. The law says that any departure from the provisions of that trust—any antagonism to its limitations—makes the act void and nugatory, and that has been decided in so many cases that I believe the law books containing cases that have decided it would make a blanket from Maine to Kentucky. When she was twenty-one, in violation of his duty as trustee and guardian, her father, George Roland, contracted with her for this identical piece of land, which was the subject of litigation, which he

afterward sold to Mary Buford, and, of course, Mary Buford could receive no good title unless she (Lizzie Roland) should give a confirmatory deed when she came of proper age. That was the title that Mary Buford received. The deed was also not properly acknowledged. Roland, the father, sought to have the daughter perfect the title. She refused, unless the purchase money should be paid to her. It had already been paid to her father. But subsequently she, having married in Missouri a man by the name of Smith, or some other uncommon name, gave, in conjunction with Roland, a confirmatory deed. But, mark you, the land in this last deed, by metes and bounds, related to an entirely different tract of land from the one originally conveyed to Mary Buford. You see that they have got their money—$22,000. The Bufords could not raise a dollar on the farm. Just as soon as Guthrie got the notes, he poured that leprous poison in the ears of the people that the title was not good. Buford could not raise a dollar on the farm; he could not get the money to work it. "What did he do with the money from his farm?" Col. Breckenridge asks. Every dollar that he could amass for the last ten years was paid in feeing lawyers, who betrayed him, as he believed, and in carrying on this litigation. That decision of the Court of Appeals—there is no power on this earth that can ever review it, that can ever revise it; but before, in the discharge of my duty as an advocate, I would say on my oath of office that I believe that the decision was the correct one, either in law or in equity, I would fall dead at the feet of this jury. In my humble judgment, after an examination of the facts in this case, after reading and examination of the briefs on both sides and the opinions of the Court of Appeals, he was entitled in express law to a rescission of the contract and a return of the money, or to receive a perfect title. However that may be, let it pass. Let it be as Robert Hall, the preacher, says, one of the unnumbered things that go up to the day of judgment. But I ask you, gentlemen, if you had bought an estate in the county of Owen, you put $10,000 in it, and gave $2,000 in notes; you find the title no good; you try to raise money by borrowing; no one will lend; you cannot raise a dollar; you cannot work your farm on nothing. What would you say! As Charles Reade says, "put yourself in his place." Gentlemen, would not your minds under such a misfortune, strong as they may be, totter under that load?

But, gentlemen, you must remember that it is immaterial as a principal in medical jurisprudence, it is immaterial whether the delusion that he entertained was based upon either real or imaginary wrong. The result is the same. His delusion was that all the

people with whom he dealt in relation to this property were combined and in a conspiracy against him, it is immaterial whether the facts be such as to warrant the idea that he had been hardly dealt with or not. The question is, did he have that delusion? If he had—as I shall demonstrate to you very soon—then he was an insane man, and in the sight of the law, and in conformity with his honor's instructions, he cannot be convicted.

And right here, gentlemen of the jury, lest I may forget it, the question may be put to you by the learned attorney for the people, when he comes to sum up this case: "What are you going to do with Buford?" I do not ask that Buford shall go forth upon the world. The asylum is his place. I make a prediction in the presence of this large number of people, and it is this: That Colonel Buford, now rapidly approaching dementia, that total tomb of the mind, if he is not strangled by your verdict, within a year's time will so far have parted company with the anchor of his reason that he will be unable to tell the face of his best friend or to speak his own name. But the district attorney will say to you that he can be cured. Ah! that is a disease that can never be cured. No doctor or keeper of a lunatic asylum will ever certify his recovery; first, because it is impossible; next, because he will not dare to do so. Would you send an insane man to Kentucky's hell at Frankfort? Is it not a sin to punish him with a living death? If, in the darkened chamber of that man's mind, he could form a decision upon this subject, I believe he would prefer death to such a lingering captivity.

Gentlemen of the jury, there is just one point that I wish to notice in Col. Breckenridge's speech; with its bouquet part I have nothing to do. Its fragrance is in my nostrils, but I turn to the rose and it is faded. As I tell you, I am here to address you in no popular terms. Neither am I come here with prepared and select graces and flourishes. Concerning his controversy with my distinguished and talented brother Settle, I have nothing to say. I think Mr. Settle is well and fully competent to take care of himself. But there is one thing that escaped Col. Breckenridge in the fervor of advocacy which pained me to hear, coming from the lips of so lovely a character. Not content with depicting the nature and completeness of the overthrow of this man, tracing as he did with remorseless pencil the history of his life (from his standpoint) from the time he left the shelter of his ancestral trees at Woodford, down to the scene at his sister's grave, he added a Parthian arrow of malice, when he said that, as much as Buford loved his sister, he never embellished her grave. Here was a man struggling

for existence—for life—through ten years of hardship, against all the combined powers of Frankfort and everywhere else. He had hardly the means of subsistence. When he went there that day, it was for the express purpose of seeing what he could do, or of making some arrangements for erecting a monument over her whom he loved. He was disappointed in the money that he expected to receive. And while he is here in bonds and in chains, sitting here so indifferent, so vacant and absorbed, his thoughts are even now dwelling upon the sad story of her wrongs and resting upon her lonely grave. Her memory is written all over his life; it is written all over his character; it is written all over this tragedy; and when on the brink of a possible grave at Frankfort, his last thought was of her, and he says in that moment which culminated in this most tragic horror: "My sister's assassination and robbery which I wish to try." And can any one who has heard the evidence—you, gentlemen of the jury, can you say in your hearts that there was ever a moment when he forgot her image? Was there ever a moment his heart did not throb in his bosom when he remembered her saintly name? Oh, gentlemen of the jury, whatever you do with this man, do not despoil him of that last consolation, the love of that saintly sister who now so sweetly sleeps. Do not pluck from his despairing mind the last solace that he has on earth.

Gentlemen of the jury, I now come to what is the main issue in this controversy. What was the character of the mind of Thomas Buford on the twenty-sixth day of March, 1879? I join in whatever words of praise, of commendation, have been spoken in eulogy of Judge Elliott. I believe him to have been the most lovely, amiable and Christian character. May he serenely sleep in his everlasting rest. But I ask you, gentlemen of the jury, can you recall to life and beauty his inanimate form by the strangulation of that maniac? Can you satisfy the law, which forbids you to convict an insane person? Will you satisfy public clamor, which, after all, when the excitement is over and passed away, will change its present cry, and the public will say that you have done your duty as well as the Roman of old. Can you satisfy your own consciences, sworn as you are to true deliverance make between the people and the prisoner, when, by every application of law, this maniac is proven to be insane by their own testimony? I will first prove him insane by our evidence. I shall then, with the same mathematical accuracy, prove him insane by their proof, including the testimony of Dr. Chipley. That is not a difficult task I have before me; for, while I have the greatest reverence for Dr. Chipley,

and would be loth to say anything disrespectful of that venerable man, still it is necessary to make his proof my profit. And I will even make it satisfactory to my astute friends of the press that he is one of the strongest witnesses on our side—his statements; not his conclusions. I told you a little while ago that, where one man had escaped unjustly by the plea of insanity, seven insane men had been strangled by law. And is not that enough to secure the greatest caution? Is not that enough to put the jury on their guard against substituting prejudice for proof? A great many years ago, in the state of New York, a man by the name of Freeman slew the entire family of Van Ness, in all their life and beauty, including even the little children—one upon its mother's knee. He was indicted for the homicide. The court assigned to him Gov. Seward for counsel. Gov. Seward, upon investigation of the facts, came to the conclusion that the man's brain was diseased, and he had the moral courage to go into a court of law and proclaim his conviction, and to defend that man upon the ground of insanity. John Van Buren was attorney-general ("Prince John," as he was called), with the entire press at his back, calling for immolation of the man, with the clergy thundering from their pulpits, not in imitation of their Divine Master, the Prince of Peace, but more like thirsty hounds upon the fox's track; every influence of social life and order arrayed against him, no man but Seward for him; the jury, carried away by the clamor, in the face of the most positive evidence, and convincing medical proof, found him guilty, and while the case was pending on appeal the prisoner died. What do you suppose the *post-mortem* revealed? An *extensive* and organic disease of the brain, so that pieces of the brain on the knife of the surgeon parted at the slightest touch. And what a crime was that jury prevented from consummating which they started to achieve; but Providential interference saved their souls from the guilt of his murder. Do not doubt Buford's life is as dear to God as yours, and if, in the face of the most convincing proof, you hang him upon the gibbet, how will you answer upon the great day? Will it be sufficient for you to say that society and the press demanded it, that the advocates demanded it? The question that will be put to you will be, "Did you do your duty?"

You must remember a case (some of you, I have no doubt), the case of John Gardner, who attempted to murder Postmaster-General Wickliffe, then a citizen of Kentucky. Gov. Wickliffe was not fatally stabbed. On his recovery, he humanely interposed, obtained a commission of lunacy, and through his efforts the man was saved. It transpired that the man had thought that Governor

Wickliffe and others had conspired to throw him from the deck of a steamboat. And, now, suppose Wickliffe, with a narrow view and unchristian heart, had pursued that man with the vindictiveness of the bloodhound, had scouted his defense, what situation would he have been in? Why, gentlemen, books are full of such cases. Another instance: John Martin, who burned down the church at York, England, because he was a dissenter, and because he believed he heard a voice from heaven commanding him to burn down that pile of heresy.

There is one feature in this trial which, in my opinion, is the controlling issue. You will remember the evidence of Mrs. Merriwether. She states in her testimony that she was for many years acquainted with Col. Buford—that he often came to her house—that he frequently stopped there for a night, and she narrates one or more occasions on which, hearing him walking on the corridor, she got out of bed, put on her clothing, and went out to where he was passing to and fro, up and down, talking, mumbling, cursing, muttering to himself, and she inquired the reason of his unrest. You will remember the memorable answer. That he had been in communication with his sister's spirit. Now, you must remember there is not one iota of proof that antagonizes that statement of Mrs. M., and, for all the purposes of this trial, it must be taken as conclusively and controllingly true. He believed then, as he frequently said to Mrs. M., that he both saw and communed with his sister. While I respect every man's faith and belief, I do not believe in spiritualism—communications of the living with the dead. Medical jurisprudence denounces it as rank madness in any one who does. On that question there can be no divergence of opinion in the medical profession—every writer who has ever written on that subject. You may take all the most eminent medical authorities (with whom Chipley does not appear to be familiar), and there is not one of them but declares that such a belief indicates not only positive, but radical, derangement of the mental functions. Well, what did Chipley say on that point? His honor did not allow me the scope I desired. After recess, the court rather shut the gate against the cross-examination of Chipley, who retired behind the bars, and when I found that his honor's rulings were in that direction, I did not wish to pursue questions that could only be objected to. In your opinion, what is the condition of the mind of the prisoner? He believes that he was in communication with the spirits of the departed. "Why, that is evidence of delusion. Delusion is insanity, undoubtedly."

Gentlemen, to illustrate the domination that a single idea may

get over the human mind, one of the most familiar cases known to the legal and medical world is that of the witness who was cross-examined for several hours by Lord Erskine in a celebrated trial in England. He examined him upon almost every topic of human knowledge, with which, strange to say, the witness seemed to be familiar, and to use the felicitous language of Dr. Johnson in his epitaph on Goldsmith, "He touched no subject that he did not adorn." Lord Erskine was about to let the witness go, when Dr. Sims suggested the question, "Ask him if he is the Redeemer." Upon the question being put he arose from his seat, straightened himself up with a solemn, almost tragic air, and, placing his hand upon his heart, he exclaimed, "I am the Christ." Now, that is an instance of a most intelligent mind constantly pursued, constantly imbued, constantly controlled, by a central idea that was manifestly a delusion. Another is recorded by the eminent Lord Mansfield in the case of *Wood v. Monroe*, where a man who had acquired a large fortune in a successful business in the city of London, had built it up by fortunate business sagacity, by his prudence, by his care, and honesty in his dealings with his fellow men, and yet labored under the unhappy delusion that he had a correspondent in the person of a princess in a tower. When he first brought his action for damages against Dr. Monroe for detaining him in his sanitarium, as Dr. Chipley would call it, such was his composure and forethought that it was impossible to shake him upon any subject, until the question was put to him in reference to his correspondence. Then he revealed his infirmity, and to show you the remarkable working of his mind in that instance, seeing that he had lost his suit by the revelation of that infirmity, he brought another within the jurisdiction of Westminster, and such was his self-control that it was impossible, on that occasion, to compel him to expose his affliction, and it was only, sirs, upon proof given *aliunde* of his statements made on the former trial, that Mr. Justice Mansfield directed the jury to find for the defendant.

A great deal has been said here, both by Mr. Breckenridge and by General Rodman, in reference to the candidature of Col. Buford for the legislature. If I remember rightly, I read some years ago, either in a Kentucky paper or in an extract from a journal in this state, that the whole Kentucky legislature were crazy, because they refused to pass an appropriation for the opening up of the Kentucky river. The world's history is full of instances, gentlemen, of the most exalted genius, of the most profound learning, of the most perfect address in public affairs, all centered in persons who were in reality insane. You must draw a long, a wide, a vivid line

between insanity, which is a derangement of the faculties with which God has gifted man, and imbecility, which is a mental darkness from the beginning. The insane may accomplish many things in this life, and be possessed of surpassing confidence; the imbecile finds himself utterly unable to grasp an idea, to control the purpose or to achieve an object. But, after all, in this case, supposing the theory of the other side to be true, to what does that evidence amount? I believe there are, in the entire testimony, two or three people, who, on being pressed closely on the cross-examination of my brother Monfort, admitted that they had favored his nomination at the primary convention, and when asked their reason, answered that he was their neighbor.

Well, now, gentlemen of the jury, that is all the consolation and satisfaction the prosecution have out of that circumstance. Were these two or three people, a year or two in advance of this terrible tragedy, to foresee—was it within the knowledge of man that the insanity which they detected in him on a single subject was to culminate in this awful catastrophe? The same observation is true in regard to the comment made by Gen. Rodman upon the testimony of Wallace Harper, who heard Tom Buford say, he declares, that if the suit went against him, he would have satisfaction, or that he would have blood. It did not occur to that gentleman, any more than it would to you or me under similar circumstances, that that monomania, as the court declares it to be, had taken such entire control of his mind as to culminate and end in assassination. I say that some of the most brilliant men that the world has ever seen have been afflicted with insanity. Lord Clive, who founded the British Empire in India, closed his eyes in mental eclipse. And there is a very recent case in this state of Kentucky, where a judge of this very Court of Appeals, conscious that he was mentally afflicted, blew out his brains with a pistol. I refer to the case of Judge Hist. While he was on the bench, was there any judge who was clearer, who was more accurate in his decisions? Yet he felt a cloud over him; he felt his doom coming on, and recognizing the fact that he had parted anchor with reason, he did what was insane, jumped the life to come, and rushed unbidden into the presence of his Maker. You see that same singularity in the walks of literature, of science, and of art. Keats, one of the most brilliant poets, the divinest bird of British song, closed his life in mental darkness at Naples. Hugh Miller, the great Scotch geologist, who opened up to the fascinated mind of mankind the secrets of the natural world, died by his own hand. And how almost comparatively recent is the circumstance of the greatest historical painter that

England ever produced, who, worn out with the woes and disappointments of this life, took his own, and passed away as a suicide. So you see, in the light of history, in the light of experience, in the light of example, there is nothing but weakness in that argument. True it is, that mental strength and weakness exist only in the comparative; but true it is that the most gifted beings whom the Almighty God has endowed have in some particulars of their career shown indications of the mental infirmity which we claim affects this respondent.

HIS EARLY AFFECTIONS.

I was very much surprised and grieved the other day to hear the gallant and chivalrous Colonel Breckenridge, and even General Rodman, make light of the disappointed affection of Colonel Buford in his early life. True it is that he sits there to-day, solitary and alone, a childless man. True it is that about that ancestral tree cluster only himself and brothers, and they are childless men. True it is that the condemnation provided by Heaven on the intermarriage of close relations has fallen upon the first generation, and when they die they are the last of their line. Gentlemen, some twenty years ago he was captivated by the beauty and accomplishments of a Kentucky lady. He believed himself acceptable to her, and the wedding day was set. Every preparation was made for it, but at the last moment she rejected him on the advice of her friends, because they did not believe him to be of a sound mind. And, great God! in this, the supreme hour of his life; in this, the hour of his great affliction, with all these years of despair and sentiments of prejudice combined to crush him, is it in the heart of any advocate—can it come from the lips of any advocate to charge to his prejudice one of the sincerest attachments that ever graced the life of any man? How do we know but what, if he had met his destiny in that woman, instead of being here in this mortal peril, he might have been so controlled, so influenced and so directed, that instead of being, as it has turned out, a terror to society, he might have been one of its ornaments and one of its prides. How can my friends on the other side feel that it is decorous, that it is even decent, to make sport and humor for a miscellaneous auditory of the disappointment of one of the greatest and divinest feelings in the human heart? And before I trace my steps in the direction of Dr. Chipley, let me say a word in relation to the prisoner's conduct with the sheriff of Henry county, when the sheriff went to take possession of the estate.

You must remember, gentlemen of the jury, that this litigation

was then pending, and that, until the last final decision against him, he was very cheerful and confident of the result. I ask you, taking the evidence that has been developed here, was his conduct on that occasion of a sane or insane character? The very idea of the man setting himself against the vested authority of Kentucky, as represented in the officer of the law, standing, like MacGregor, on his native heath, defying its power. I ask you, gentlemen of the jury, in all candor, is not that the act of a positively insane man? But if there was not a skeleton in the closet of that litigation, if there had not been a great wrong perpetrated somewhere, a wrong which, like blood, may yet cry from the ground, would they have made the arrangement with him for him to retain his possession? They had not yet received the fiat of the law which gave then absolute supreme control and possession of the estate, which he did not purchase as a speculation, but which he bought to make a home for his sister and kindred. And is it possible that, before so intelligent a jury as this, such comments can be seriously made; and is it possible that the learned gentlemen, distinguished in their profession for the arts of advocacy, can believe that they will make an impression? As I said to you before the recess, I repeat, Dr. Chipley proved our case, even though called by the prosecution. The question was put to him—and, in order that this discussion may be fresh in your minds, I repeat it—if he labored under the hallucination that he communicated with the spirit of his sister, what does that thing indicate? And you must remember that at the time Mrs. Merriwether conversed with him on this subject, in these several conversations in her house, his sister had been years in her grave; she had been laid away in the cemetery of Eminence, and her spirit, relieved from the war and torments of this life, had gone to seek the shelter of the great central bosom. I say the question was put to him, "What do you think that indicates?" The answer was, "Insanity; it indicates a delusion, and a delusion is insanity." I care not for the oft-repeated declaration of Dr. Chipley, "But he is not insane; but he is not crazy, but that does not prove that he is crazy," for if I establish to you by the admissions of Dr. Chipley, whom I intend to treat with the most perfect respect, that he concedes all the attributes and elements that constitute insanity were here, then he himself proves our case.

What is the doctrine as understood over the civilized world in regard to these hallucinations? I make no controversy with any man's religious belief; I make no controversy with any man's religious sentiments—that is a sacred thing, between his own heart

and his Maker. But what the law has declared, what the principles of science have declared to be the truth, you, as jurors, must on this occasion receive. And, as I stated, may it please the court, in the opening of my address to the jury the other day, it has been the settled law in American jurisprudence ever since the pioneer case in this country in 1843 — the case of *The Commonwealth v. Rogers*, tried in Massachusetts—that where that state of mind is established to exist, is found to exist, then there is no question of the insanity of the person so afflicted. That is the doctrine of all the experts; that is the doctrine of all the medical writers; that is the doctrine of the text books; that is the doctrine of the law. And it is the principle of law, and of medical jurisprudence, which applies not only on this side of the Atlantic, but it applies to all Christian jurisprudence, to civilized jurisprudence, wherever it is administered. It was when Dr. Chipley's mind was brought to that point that he saw the dilemma in which his previous testimony had left him. He saw, when he conceded that it was a delusion, that he was conceding that it was insanity. And General Rodman made a remark in connection with this branch of the case, to which I briefly refer. He says: "Supposing that he did hear the spirit of his sister, do you believe that this spirit of that sister ever told him to kill Judge Elliott?" Who has ever contended that he heard her spirit? Who has ever contended that he heard her voice? But he believed he did, and in that consisted the hallucination—in that consisted the insanity. Why, gentlemen of the jury, could there be any more positive evidence to the mind of a calm and rational being of the insanity of an individual than that he believed his acts, his utterances, his declarations were governed by the voices of the unseen world? We have our theology; it is founded upon the Rock of Ages. Our theology is the Christianity propounded by the Saviour, and he has told us under what circumstances we shall see his face, and under what circumstances we shall be cast into utter darkness. It is against Christianity, it is against law, it is against medical science to believe in the existence of communication between this land and the land of shadow. And by the combined voices of Christianity, law and science, it has been decreed that a man who sincerely believes in that hallucination has left the anchorage of his mind, and is but a pauper in the mental world. I say, gentlemen, from that there is no escape. But another thing to which I will briefly allude. You remember that I asked Dr. Chipley upon the stand this question: "Does long and protrated emotion tend to produce insanity?" After a series of arguments, shiftings and

evasions, and the continual injections of "Well, he's not crazy"—that seems to be his dominant idea—as the result of his premises he admitted that that was true. Was Colonel Buford under long and protracted emotion? Did not that controversy last over ten years? Was he not lifted by its varied history, by its checkered career, from the depths of despair to the ecstacies of hope? And was it not proved by a cloud of witnesses, not only for the accused person, but on the part of the prosecution—was it not proved that it was with him the constant subject of conversation? Was it not natural that it should be? All the fixed recollections of his life, outside of the Woodford home, clustered around that estate in Henry. There his sister lived; there she lived her life of purity, of honor and of usefulness; and there she died, and from its portals her mortal remains were taken, and on that sacred spot he took his last earthly view of that dead sister. God grant, in His infinite mercy, that, if your verdict be the strangulation of this poor, afflicted man, he may meet her in heaven. For I do believe that in the book of the Recording Angel he is not charged with those deeds which have not been the offspring of malicious purpose and malign intent, but of the tropical growth of a diseased mind and perverted understanding. How did the Saviour himself, while on earth, treat the insane? He cast the insanity or the Devil out. Did He place them in the stocks? Did He place them in prison? Did He consign them to the scaffold? Did He expose them to infamy, to scorn? No, but in the benign purity of His celestial heart, He took compassion on their condition; He exorcised them. And can you have, in the whole range of the civilized world, an example more striking, more controlling, than the example of the Redeemer?

Gentlemen of the jury, I think you will agree with me without any further argument, that he was under long and protracted emotion. Follow me farther, and I challenge you, on your oaths and your consciences, to remember that this was the question that was put; and I challenge you on your oaths and your consciences, to remember that the answer I am about to give was the one that was received: "Do grief and sorrow, do love and hatred tend to produce insanity?" He did not answer the question as originally put: "Do they tend to lessen the grasp of the reason upon the mental faculties?" After many evasions, and shifting and argument, on his part, he finally admitted that they did. Well, then, if that be so, the very expert that they have brought here, irrespective and despite his continual exclamation, "he is not crazy," has proven that Buford was insane.

The fact stands like a light-house in the sea, and the prosecution can not recede from it. I believe, gentlemen of the jury, that this principle which I have just enunciated, in which the whole legal and medical world concurs, is the one that controls your deliberations, and if you, as honest men, as you are, take the testimony of Dr. Chipley as given, you must come to the conclusion that those elements of the mind existed that in the language of the law, and of the medical science, constitute insanity. He is aged, gentlemen, and I have no doubt that the tribute that Col. Breckenridge paid to him is deserved. Honor thy father and mother, says one of the commandments, and in the same spirit of veneration, far distant be the day when I shall, by intimation or insinuation, cast scorn and contumely upon gray and venerable hairs. That he intended to do mischief I disbelieve; that he has done us great service I do know.

And his statement that his conclusion is different from his premises is attributable, in my mind, to the numerous cares and anxieties with which his life is checkered. He is an old, a venerable man, and it is possible that even his originally strong mind, from its constant contact and association with the insane, is slowly, gradually slipping away and breaking up. Why, the great Dr. Gray stated to me that he had spent forty years of life in the investigation of and practical experience in this science, and that he still stood on the seashore of its knowledge. Dr. Gray could explain, perhaps, that peculiarity in the mind of Dr. Chipley, which struck painfully and sharply on my understanding and on my heart. And I say it with all frankness, and still with all respect, that I stand appalled when I consider that upon testimony such as this, upon the testimony of Dr. Chipley, such as this is, that a human life is to depend. I stand appalled that the estates and lives of citizens are in such keeping. Now, gentlemen of the jury, from all these observations with regard to Dr. Chipley, who, I declare, is substantially for all the purposes of this investigation our witness, I ask your attention for a few moments to the testimony of Dr. Bell.

The law, in its wisdom, has created what is known as expert testimony. A person may know how to build a wagon, and still not know how to shoe a horse. Would you not give more weight to the opinion of a person who had been experienced in a particular business than you would to one who had no such experience? That is only natural. That is the principle of law. That is the sentiment of society. Dr. Bell, says Gen. Rodman, ought to be kicked out of the courts of Kentucky. Dr. Bell, says Gen. Rod-

man, fifty years ago, would have been kicked out of the courts of Kentucky. Remember that venerable man as he appeared before you. One of the greatest scientists that has ever lived in the state of Kentucky. A man who has conferred as much renown upon this commonwealth as Henry Clay in *his* avocation. Kick him out of court, and for what? Because he did not come here and clamor that a senseless human being whom God Almighty had seen fit to afflict, should be sent to the scaffold or the penitentiary. Kicked out of court, and for what? Because he unfolded to us, with generous lips and feeling heart, the great stores of learning that he has garnered and treasured up. Kicked out of court, and for what? Because he shed a ray of light upon the doom of that unhappy man; because he held up the index-finger of science and forbade you and the law and its ministers to crucify him. Kicked out of court, and for what? Because he has enriched the medical science of this country and the world; because his views, as expressed by word of mouth, and in the writings of his life, have been embodied into the views of the great text-writers of the world. Gentlemen, is that candid treatment; for so venerable, so able a man as Col. Breckenridge did not find it in his heart to say that; Col. Breckenridge did not find it in his heart, when that venerable old gentleman was far away, to throw after him a sneer, reproach or denunciation. And what will be the feeling of the cultured world? What will be the feeling of the people of Kentucky when such presses as the *Courier-Journal*, the *Enquirer*, the *Commercial*, the *Gazette*, all those types of Western journalism, flash out these things to-morrow—that the prosecuting officer, thirsting and vindictive for the blood of an insane man, has offered dishonor to gray and venerable hairs? But what is Dr. Bell's testimony? He says that he came here with his mind free from impression as a piece of white paper. He sat here patiently and listened to most of the evidence, and that which he did not hear was read to him by my brother Settle. And he says, after a careful consideration of that testimony, that the defendant is insane. Nobody casts reproach upon his sincere desire to tell the truth. No; but this man who is recognized in two continents as one of the best mental delineators in the world, is treated by Gen. Rodman as though he were a bandit and assassin.

Now, what does Dr. Bell say relative to the mental condition of the prisoner? That, in his judgment, there is no doubt of his insanity. The law recognizes experts; the prosecution recognizes experts, because it brought Dr. Chipley here. And it is not a question of professional rivalry between the two gentlemen. It is

a question of immortal truth and scientific principles applied to existing facts. What is the character of his insanity? Gen. Rodman would have you believe that Dr. Bell testified that he was not intellectually insane. Dr. Bell's exact words were these: "There can be no insanity without the involvement of the intellectual faculties." They have tried to belittle this case by declaring that Dr. Bell asserted that the mental infirmity of Col. Buford was what is typified as moral insanity, and Col. Breckenridge, in illustration of his ideas on that subject, has spoken to us about the mythical tiger, and about the mythical den in the city, and then about the young man risking his own money, and then risking the money of his employer. Well, the Colonel gives such a vivid picture of those scenes that, although I have never witnessed one of them, it is no doubt the correct one. However, it is impossible that Col. Breckenridge's eyes could have rested on such a scene, and, doubtless, his illustration is drawn from hearsay. Now, how infinitely small, how infinitely trivial and mean, is such an illustration as that. Then he said something about a rich woman taking a bundle of silk and a poor woman taking a bundle of linen. The object was to inject into the breast of this jury a prejudice. Gen. Rodman said that we contended that a poor man was never insane. We never contended anything of the kind—never said anything of the kind. Mental affliction, gentlemen, comes from heaven. It is like the rain. It falls upon the just and the unjust. It falls upon the rich and the poor. In the inscrutable decrees of Providence, the victim is doomed to an early death. But, I repeat, how small are such efforts in the presence of this tremendous issue! A human life is passing through twelve brains. The gaze of the world is on Owen county; the eye of the culture of the planet is on you. What you mete out here, perhaps, may be meted out to you.

To return to Dr. Chipley. What is called moral insanity, says Dr. Chipley, is moral depravity. Correcting himself, he says: "There is no such thing as moral insanity." In giving a definition of moral depravity, however, he gives the definition of Dr. Pritchard of moral insanity. There the president of the Sanitarium is again caught in the net. Now, all that I contend for in that regard is this: "You may call it, as his honor calls it—monomania; you may say, as Dr. Bell and Dr. Chipley and a great many other writers say, that that element of mental infirmity does not exist. Denominate it by its simplest term, aberration of the mind, and then what is known as moral insanity, what is known as monomania, with all these subdivisions, is simply a disease of a portion

of the functions of the mind, which God put in man for the noblest purposes. Another thing which appears from this evidence, and it is a law set up in medical jurisprudence, and it has become the law in every country where civilized jurisprudence is administered, that monomania—we will take his honor's term for the purpose of this discussion, because we want to get within his honor's ruling—that monomania, while it may be concealed, can never be feigned, can never be simulated. Disease in the mind to the extent that all the faculties seemed warped and perverted to one end, a person may be able to conceal that affection from the closest scrutiny, but he can never feign or simulate it. In other words, he cannot impress others that he is so afflicted for any purpose that he may have; and you may take the long galaxy of medical stars, take the long galaxy of writers from the beginning down to the present, and they are all concurrent in the view, and it forms a stream of scientific opinion. And what are we, you and I, that we should set ourselves up against men who have spent their lives in the discussion and examination and experience of this subject.

I desire especially to speak in vindication of Dr. Kennedy, not that he needs it. Now, my friend Gen. Rodman, and I desire to say nothing personally disrespectful of him, raised a great laugh the other day, Saturday, over what he termed the singular arguments of the sage of Batavia. A good actor is my friend, General Rodman. As he swung round he caught the merry twinkle in his honor's eye, and he affected to laugh heartily; but whether that be an impossibility in his nature, I do not pretend to say. Before that laugh, like the chuckle of John Willett, had died out in his stomach, he became the same relentless, remorseless prosecutor as before. What was all that laughter caused by? It appears that Dr. Kennedy is president of the Ohio State Medical Society, and that he had written a pamphlet, not for general distribution, but for circulation among the profession, which is usual and ordinary when new views are advanced to the profession for mutual discussion and advantage. Well, I have often heard that Gen. Rodman is a very able tactician, but how he ever got possession of one of the pamphlets I don't know. But what does that amount to? simply that the general, and I say it with all respect, has great ignorance of medical terms, and not only did not know the meaning of the words he read, but pronounced them incorrectly; and the very words and the very technical terms employed in this much-abused pamphlet, mind you, are not those of Dr. Kennedy, but they are the scientific expressions of the greatest writers of the whole world. But Gen. Rodman thought that perhaps he could

stimulate the auditory; he himself wanted a rest, and he thought that, by the subtle relation that seems to exist between the jury and the audience, by exciting a broad and general laugh, he could give us a violent stab in a mortal part. It was to the mind of a man who was informed on the subject, I regret to say, a lamentable display of human ignorance. And, of course, as everywhere on earth when ignorance opposes its brazen front against the calm brow of intelligence, it is with a laugh, to captivate the multitude; and poor Dr. Kennedy, who has been so much abused, really did not originate a single medical term in the whole pamphlet. Now, out of that tremendous Frankfort mountain peeps that little, miserable mouse.

What is the doctrine inculcated in that pamphlet? Simply some views, original in their character, which Dr. Kennedy had upon the subject of mental affections, in which he, differing from the received idea that the impression is made upon the part diseased, contended that the impression was carried to the part diseased by the external arteries of communication. Well, how has the medical world been affected by them? The London *Lancet* has adopted his view. I see that a learned German *savant* has done the very same thing. And while General Rodman, elated with the hope of victory, is laughing at Dr. Kennedy in the county of Owen, one little spot in the United States, the ideas generated by Dr. Kennedy are passing through the minds and receiving the grave, calm, dispassionate consideration of the first scientific intellect of the world. True, he is an elderly man. He speaks quickly. His face is that of an aged person. I submit that this is not a shambles in which the butcher stands and stabs the victim, either to the applause of the multitude or that of his associates. This is a most stern, tremendous business; a business which you little thought, when you were children, you would ever have any hand in. You have not your peers on earth at this hour. Not only do you hold a man's life in your keeping, but perhaps the *immortal soul!* But you decide, also, by your verdict, great questions that affect the body politic—questions that affect the body of society. It is to declare whether a man, hunted and persecuted and insane, is to be destroyed; whether such a person, brought to the verge of destruction by trouble, is to offer up his life to vindicate the majesty of the law never violated, because the law says an insane man can do no crime. The law demands of you, the state of Kentucky demands of you, that this man's life be spared.

What does Dr. Kennedy say? Why, he goes even further in some respects, and I never like to see witnesses on their military

alignment, and you must expect in the difference of constitutions that exist in different men, that there will be variations in conclusions reached, even in scientific minds, upon facts presented. But he swears to you that this man is insane; and he swears to you that if you send him to the gallows, that if you put him in Kentucky's hell at Frankfort, a judicial crime will be committed, because you have sworn to true deliverance make between him and the people. And I ask you, which is the more horrible assassination: that of Judge Elliott, slain under even circumstances of such atrocity as he was, or the assassination of a lunatic by the verdict of twelve honest men? Before Almighty God, his crime is white with yours, if you do that! There will be no excuse, no plea, for you. For you there can be no escape. You are not insane—you are intelligent men. God has given you reason; has never afflicted you. But take his life. I would not have your consciences for all this world. Now, in reference to lay witnesses, and his honor has ruled, and for the purposes of this trial in this place that rule is controlling on me, that a physician, not an expert, can only testify as a lay person. Did you even hear in that fragrant discourse of Col. Breckenridge, which Mr. Watterson has given to the world upon a whole generous page of his great paper, a single word about Dr. Gale? Did you, in all the jokes and witticisms of Gen. Rodman, in all his sarcasm when he was telling poor Buford about his misfortunes in life, about his lost affections and his ruined career, when he was speaking of lay evidence, and picking out here and there, did you hear him say a word about Dr. Gale? I did not. I do not suppose there is a member of the jury who is not acquainted with Dr. Gale, either personally or by reputation. He is one of the most eminent physicians living to-day in the city of Louisville. He is a man of whom Owen county may be proud. Modest, unassuming, entirely sincere, he came here most reluctantly; he was a devoted personal friend of Judge Elliott. But he came here in the discharge of the highest duty. What does he say about the accused? You must remember, too, that he has known him for twenty years, and can you doubt, when he testifies as to the mental capacity of the accused, that the testimony is based on good data? Were you sick to-morrow, would not Dr. Gale be competent to attend to you, whatever your ailment might be? He says, in that manly, modest way, "I have looked on Col. Buford as a crazy man for twenty years, and have avoided him." And that was the first portion of the proof in which I detected any evidence of this tendency to homicidal mania. A great deal was said by Gen. Rodman about Dr. Hurst. Did not he impress you favorably? He

was not shaken in his cross-examination. All the comments made upon him by Gen. Rodman were then justified by the proof? What did he say? That Buford was a lunatic almost from his mother's womb—simply that he was a victim of hereditary insanity. That is all. Now, about that? You remember that I told you on that sultry Saturday afternoon on which I made the opening of this case, that I should prove first, hereditary insanity in this man; second, that the mind of the accused was affected by the pre-disposing cause, hereditary insanity, aided, stimulated, provoked by care, anxiety about business affairs and overwhelming grief and disasters. I also told you that I would prove the hallucination that he communicated with his sister. All these things have I done, and yet with a wanton—it seems to me—disregard of the proof, Gen. Rodman says that hereditary insanity has not been proven. Dr. Bell says that it has. Dr. Kennedy says that it has. The proof says that he is insane, and that his insanity is hereditary. and the idea that it can only come from the immediate parents is an illusion that does not exist in the mind of any well-informed medical man.

Why, sirs, there are peculiarities in horses that go back for generations. You will see the descendants of old Boston on the turf, showing not only the physical peculiarities of their famous ancestor, but his sullenness, his obstinacy. With the human family, mental infirmity may lapse a generation, it may lapse two, but still it is there, and none but the great God can cure or amend it. Now, to the medical mind, it is sufficient proof that a mere collateral branch of the family had three imbeciles. They know nothing of the sorrows of this life. When God permits the creation of such unfortunate beings, it seems as though, with the hand of Divine pity, he clouded their understandings, but when he permits the creation of the lunatic, he may gift him with the greatest qualities of the human intellect and human heart, but still they will be inoperative and ineffectual by reason of this leprosy in the blood. Mrs. Allen, the sister, died a raving maniac. Sinclair Buford, the brother, was slain at Versailles, because he was a maniac, by a person who stood in fear of him. He was insane at the time, as he was declared to be. You have heard the testimony of Dr. Hurst and Gen. A. Buford, and I repeat, without detaining you further on this branch of the case, that it is proven in medical science by the experts, and therefore in law as well as in fact, that this taint of insanity exists in that family; that it has been a matter of notoriety for years in the vicinity of Woodford. You remember another thing, gentlemen, that many of these witnesses

who testified for the prosecution, and who say that he was not, in their opinion, insane, had not seen him for ten or fifteen years after he moved from the county; and of course their testimony is of a negative character. For instance, you may know of events and acts in a man's career when a hundred men can be found who will swear that they know nothing of them, and have never seen them. That is negative testimony. Now, all their proof of his being sane from beginning to end is negative averment, and that to the mind of the lawyer and medical man is of no worth. I do not care whether there are twenty-three witnesses on one side and forty-five on the other. The preponderance of evidence does not necessarily exist with the greatest number of witnesses. It has more to do with the credibility and veracity of witnesses, and although we have so far the greater number of witnesses, the doctrine of law is as I stated it to the best of my understanding, and I believe that we not only have preponderance in numbers, but by far we outweigh their evidence in veracity, reliability and character.

Gentlemen of the jury, I approach another topic, and you must pardon me if I take more of your time than you think I ought, for you must remember I am pleading for a human life, and then I am invested with a supreme responsibility. I am here on my oath of office, as you are here on your oaths of office, and if I omit to call your attention to anything material, and your decision should be adverse, it would be to me a matter of unfailing and life-long regret. It would pursue me all my future life; it would haunt me in the long watches of the night and to the end of my existence. All I can do is to do my whole duty, and to leave the consequences to you and God who overrules all. The great stress of the prosecution will be laid upon this, that this man is a sane person because he meditated the crime. This is as weak as the other links in this chain. Dr. Chipley told you, Dr. Bell told you, the history of criminal jurisprudence will inform you, that some of the most diabolical crimes ever committed have been perpetrated by lunatic persons; have been premeditated days, weeks, months. So that proves nothing whatever. Why, I was interested in a case for a man, a pronounced lunatic of the most dangerous character, who had been incarcerated seven times in different asylums in London and on the Continent and twice in this country. No care, no caution could prevent his final escape. When you consider that it is far more difficult to escape from a lunatic asylum than from a penal institution, you may imagine with what sagacity, foresight and endurance he accomplished his end. Further than that, he threatened a year and a half before he attempted the life of one of his

London keepers, that he would slay him, and he worked back from Vienna to London for that purpose. Talk to me about this idea! Absurd! That mere premeditation constitutes the element of a sane mind! Why, some of the insane, until you touch the subject of their delusion, are the most subtle, the most competent and the most scheming persons in the world. Remember that example given by Col. Thompson the other day of the lunatic who delivered his keeper into custody. Thus you see that the law declares, medical science declares, that premeditation does not necessarily or by any means carry with it the idea that a person is sane.

Come down to this tragedy. If he had been a sane person, would he have invited the world to witness that he intended to take the life of Judge Elliott? If he had been a sane person, would he have communicated the deadly purpose of his mind as has been testified to you? His mind was diseased upon the subject of this suit. Not for one moment in his waking hours could he drive its dread presence from the temple of his reason. Is not that abundantly proven over and over again? It is proven that he saw but one thing; that is the conclusion from the evidence, and it is resistless. Believing himself despoiled, seeing his property wrested from him, and despairing of any relief, it was in that diseased state of mind that these threats, having no particular purpose or relation to any particular individual, issued from his lips.

One thing while I remember it. General Rodman told you that when his sister died the case had been reversed. Not so. The case had been decided against her, and she had simply gained a rehearing. It was simply the privilege to go the old, thorny path over again, with this *ignis fatuus* of possible justice and relief at the end of it. It was the harassing character of that litigation from the beginning that broke her bright and sensitive spirit. I say that was the central domination of his mind. He goes to Frankfort. Why? He was dispossessed of his Henry county home. He was ejected from the soil on which he had hoped to live, and in which he had hoped to lay his bones. His sister is dead. He is alone in the world. Like an irresistible attraction and fascination, this suit pending in Frankfort drew him there, because outside of that place he had no interest. That is what brought him there, and I do not believe, except in a general way, that the intention and the design to slay this man ever entered his mind until the adverse decision came.

The fact of his sparing Prior on account of his children, while it indicates a choice, does not establish sanity. It was some relic of

that old generous and chivalrous nature that caused pity to find a lodgment in the shadowed chambers of his mind.

This theory of Dr. Kennedy, of the gradual working of insanity, like heated lava in a volcano, with its consequent "explosion," was adverted to by Messrs. Beach and Brady, in the famous Cole case, and their views have been adopted in England *in extenso*. Such an "explosion" did occur when he fired the fatal shot at Judge Elliott, and when insanity had relaxed its hold upon the will, power and organs of his mind, pity entered his heart. He put his hand under him saying, "I am sorry; I had to do it"—showing not that he had singled him out to die; showing not that against him he treasured up the vials of wrath, but showing, as was the truth before God, that that rudderless mind had made its voyage and struck upon a rock. His kissing the gun; his cool, calm demeanor, as Dr. Kennedy says, are marks of an insane person. I imagine it was the same nonchalance, the same apathetic indifference, that have distinguished him through this trial. He is fast approaching that time when he will be insensible—his intellect lost in dementia.

In the case of General Cole, indicted for the murder of Speaker Hiscock, Mr. Beach and Mr. Brady, two of the greatest advocates that ever lived in any country or in any age, contended with success that the overpowering presence of sudden and uncontrollable frenzy acting upon a diseased mind, not simply right and wrong, not the frenzy of passion simply, but that mad, irresistible impulse, which comes when reason is overthrown, the will is subdued and the conscience palsied, constitutes a legitimate defense of insanity in a trial for homicide. In this case the deceased had dishonored the wife of the accused, who had brooded in melancholy over his disgrace, and coming suddenly upon the violator of his honor, slew him in the very midst of his friends, and within the very shadow of the capitol of Albany. The sight of Hiscock caused in the mental constitution of General Cole that explosion, of which Dr. Kennedy so graphically speaks. The same doctrine was upheld in the case of Wagner, and it is now the admitted principle that controls this class of controversies. The same rule of law is declared in *Willis v. People*, and many others.

As I have before observed, the sudden sight of Judge Elliott by Buford, the deceased judge being associated in the deranged mind of the prisoner with all the latter's woes and calamities, the homicidal frenzy seized upon the faculties of Buford, and he immolated Judge Elliott almost upon the very steps of the tribunal of the law.

You must not forget, gentlemen, in the consideration and determination of this august issue, the plain principles of law and medical jurisprudence that control it; remember that it is established science and settled law that lunacy may be produced by profound and protracted emotion, that grief and sorrow, as well as love and hatred, can corrupt the mind with disease until the grasp of reason upon the will is relapsed, the passions are unloosed, and man becomes a wild and unconscious demon. Such are the views expressed by Mandesley, Deane, Ray, Gray, Hammond, Beck, Taylor, Shelford, Brown, Marc, and the great Esquirol. Such a wild and unconscious demon was Buford on the twenty-sixth day of March, raging and violent in the streets of Frankfort. Behold in his shattered reason pity struggling with ferocity, his horrible laugh, his words of tenderness, his invocation of fate, his utterance of regret and his act of blood.

Over the dead body of the august victim, he waved his hand in silent and eternal adieu, feeling in his distempered fancy that fate had sealed with an act of tragic horror that which had been decreed from the beginning. "Canst thou minister to a mind diseased," is the question put by the first of poets and philosophers into the mouth of one of his greatest conceptions. Can you, gentlemen of the jury, reconcile the act of this man's life, so painfully panoramic in the shifting scenes of this trial, with any theory save that of positive madness?

You must remember, also, gentlemen of the jury, that the legal test is ability to comprehend the moral character of the act committed and the power of will to govern one's action in obedience to the judgment. Dr. Bell tells you in startling and almost dramatic tone that Buford's mind is rudderless. You must also remember that it has been declared as the law of this country, in the case of General Sickles, who was tried for the murder of Philip Barton Key, that the legal rule does not require that the insanity which absolves from crime should exist for any definite period, but only that it exist at the moment when the act occurred with which the accused stands charged. You will not fail to remember that in this case the insanity of Buford is proven to have been active for the last two years, and to have been latent, sleeping like a serpent in his blood ever since the moment when in infancy and innocence he opened his eyes in his mother's arms. And I beg you not to forget that in the case of *Commonwealth v. Rogers*, tried in the commonwealth of Massachusetts, in 1843, before Chief Justice Shaw and a jury, and which is, I repeat, a pioneer case in this country, it was declared as the law of the land

and the settled rule of science that a person laboring under the hallucination of communicating with the spirits of those who had "gone to that bourne whence no traveler returns," was not a sane person, and could not be punished for acts stimulated and provoked by the mental affliction of which, as in this case, the accused is the unhappy victim. Much has been said about existing differences between the law of Kentucky and the law of the rest of the world, upon the subject of mental alienation. I am not one of those who believe that any such disparity exists, for I cannot but remember the noble and exalted sentiments expressed upon this subject by the great Chief Justice Robertson, who now sleeps amid the "clods of the valley," and who has found his eternal rest. But if what has been said on this subject really be true, let legislation and adjudication in the name of humanity wipe out so foul a blot upon the administration of justice in Kentucky. Hugo says, in that incomparable work, "Les Miserables," "our joys are shaded, the perfect smile belongs to God alone;" as it is with the moral so it is with the mental world. Lord Bacon and the great Dr. Haslam may have been correct when they declared that all men were more or less unbalanced in their minds, and perhaps the idea is more felicitously described by Lord Erskine in the words, "reason had not forsaken her throne, but unreason went up and jostled her in her seat."

I do not contend, gentlemen of the jury, that a slight departure from the ordinary conduct of an individual, or an eccentricity as it may be termed, constitutes or typifies the condition of mental unsoundness. Acts of eccentricity in themselves are but rivulets that feed the mighty stream of madness, but in this case we have proven that the great central idea in the dominion of Buford's mind was that he had been wronged, pillaged and despoiled; and around the central delusion of his mind, with fascinating, hideous planetary regularity, revolved all the conceptions of his soul; and when he saw by the last adverse decision of the court of appeals his last hope on earth disappear, his mental battallions broke in panic and dissolved. Then came the cataract of the frenzy that overthrew the will power; then came with its resistless rush that stream of frenzy that carried to death and eternity the life of Judge Elliott, that startled all mankind with a tragic horror unexampled in the history of the jurisprudence of the world.

Lest I may forget it, gentlemen, let me warn you against anything that may be said on the other side, after I shall have closed, in relation to the perfect physical health (apparently) of the

accused. You remember that Dr. Chipley was forced to admit that he had never dissected a human being, and if I remember rightly, he could not name a single occasion on which he had been present when the knife of the surgeon opened up to the enchanted eye of the medical student the wonders and secrets of the human anatomy. But bear in mind that if anything is sought to be said on that subject, to our prejudice, that *post mortem* examinations of insane subjects have failed to reveal, in many instances, any evidence of physical disease or organic disturbance; furthermore, there is no proof in this case whatever as to the real physical condition of Col. Buford, consequently, the relation of physiology to mental condition will not enter into your deliberations.

Gentlemen, did you ever see the phonograph invented by that sublime genius Edison; by its instrumentality he causes a piece of tin-foil, wound round a brass cylinder, to speak the language of joy, pathos and human pity; to utter words of hope, despair and human sorrow. And how does this letter, written by Buford on that day of blood, his foot on the brink of eternity, speak to us to-day? It tells us that the o'ermastering monomania of his life had conquered the shattered remnants of his reason. It speaks to us of that undying, unfaltering, eternal love for that wronged and sainted sister who now sleeps in the Lord. It tells us that his last earthly provision was for one who in the days of anguish and pain, had soothed, caressed and cheered him. Christianity forbids that you immolate this man. Salvation bursting from the sepulchre of the Lord westward has belted the earth, and it is now returning to the cradle of its birth. The principles taught by the Redeemer in that sacred land, within whose limits are the pool of Bethesda, the brook of Kedron and the cedars of Lebanon, forbid the sacrifice to human vengeance of one afflicted by the inscrutable power and will of the Deity.

One other topic, gentlemen, and I will close this discussion, as the weather is most sultry, and I have no doubt your patience is well nigh exhausted. All the medical experts on both sides, including Dr. Chipley, concur in the opinion that sleeplessness, chronic and long-continued, is one of the most positive indications of a diseased mind.

And the proof in this case demonstrates beyond controversy or contradiction that for a long time anterior to this tragedy, Col. Buford's nights were sleepless, and were passed in mental anguish and disturbance. He walked the floor, muttering to himself, cursing and denouncing real or imaginary foes, and, in wierd communication with the spirits of the departed in the land of shades,

listening to voices from an unseen world. In the language of some of the witnesses, great scalding tears rolled down his cheeks, and the strong man of dauntless heart was convulsed in the paroxysm of sorrow—and I ask you, gentlemen, is not the story of his life one that justly causes the tear of human sympathy to flow down the marble cheek of justice. Behold him upon the highway, astride his horse, talking loudly to himself and gesticulating to the air.

It was not in this mood that Daniel Webster composed those prophetic and sublime sentences that saved the American Union and destroyed Governor Hayne. It was not in this mood that Henry Clay, the Great Pacificator, the Great Commoner, composed those magnificent sentiments that enthralled the American senate and fascinated the world. So you see that Col. Breckenridge in this illustration and comparison was not in his usual happy vein.

I think I have now said all that need be said on our side of this case. It is in your hands. I thank you for the kind consideration and attention with which you have deigned to honor me. I am speaking here as it were for the dead friend of my youth, and if it is possible that he be conscious of what I have done it is a consolation to me to know that he at least understands that I have never forgotten the ancient friendship that existed between us. I have demonstrated in this proof that this man's life cannot be taken without a judicial murder. I have shown you the acts and influences that operated upon his mind and the reason why, in the view of the law, in the view of medical science, in the view of Christianity, in the view of humanity, you should not lay your hands on that life.

In the name of our Heavenly Father, whose service is perfect justice, in the names of your wives and children, to whose embrace you will soon return, in the name of Christianity, humanity, science, progress and the law, lay not audacious and sacrilegious hands upon this mentally-benighted man, from his very infirmity under the protection of heaven. In the progress of the ages this country may become only the subject of the antiquary, but let not the historian of that distant day have it to record that a lunatic, o'ermastered by his fate, afflicted with the direst infirmity with which God has ever chastised any of his children, was, in obedience to the bestial voice of popular ignorance, clamor, prejudice, and revenge, in the gaze of the civilized universe, strangled to death on the scaffold and inhumanly rushed, soul unprepared, into the presence of his Maker.

Col. Breckenridge, in his beautiful and eloquent peroration, brought before you the state of Kentucky holding in her hand the

record of her list of crimes, and with her he brought the body of the dead judge. And upon this spectacle he demanded judgment for the people. I bring you, the dead judge, the mad assassin, and arraign all before Kentucky, and demand, in her sacred name, her traditions and her laws, that you be true to the solemn oath you have taken to true deliverance make between the people and the prisoner.

I stand in the land of Boyle, Crittenden, Clay and Robertson, and in their name, in the name of that law which they so nobly vindicated while upon the earth, I demand that this mad captive go free and unscathed from this temple of justice; and, in the sentiment of the sublime prayer of the common law, "May God grant him quick deliverance."

The prisoner was found guilty, and sentenced to a life imprisonment—the jury fearing to acquit and subject the prisoner to the risk of lynching, and themselves likewise. By the adroitness of counsel a new trial was secured, through a bill of exceptions on excluded evidence. The court of appeals judges, being witnesses to the shooting referred to, *could not hear the appeal*, and a new court was appointed by the governor, *from lawyers who had never been judges*, which granted the new trial. Some one hundred witnesses were sworn on the last trial, in which Phil. B. Thompson appeared as senior counsel for the prisoner, and displayed great skill in the management of the defense, which was practically made by the rules laid down by the court of appeals. The main work was done on the first trial, and had a fair trial then been had, it would have doubtless resulted as the last one did. The court of appeals held with the prisoner's counsel on a majority of all the propositions and exceptions.

The second trial resulted in a verdict of *not guilty by reason of insanity;* and the prisoner was, and is still, confined in an asylum near Louisville.

The closing words of Gen. Rodman and Col. Breckenridge are given under the general head of "Closing Periods," where short extracts are given of many cases and speeches, reduced to the smallest possible limit.

CLOSING PERIODS,

And Extracts of Speeches.

While counsel seldom commit closing periods of an argument, they may often refresh their memory and inspire their thoughts by a review of the words that other advocates have used in closing their addresses. This will be clearly illustrated in the case of Governor Crittenden in his famous allegory on the creation of man, which, though borrowed from the German, and *read to the jury*, did much to immortalize the orator as an orator. Webster frequently borrowed. Carpenter formed all his speeches like a bouquet, with one central figure, the rest grouped around it. Beach closed the Beecher case with a quoted passage. Many apt sayings and forcible figures may be found in these periods, with some in the cases, and others reported throughout the volume. A brief study of the effect of oratory will readily convince one of the fact, that short sentences, clear illustrations, strong comparisons and a *variety* of expressions in argument, will *please and persuade men;* for each has a fancy peculiar to himself.

G. V. N. LOTHROP'S CLOSING IN VANDERPOOL CASE.

"I repeat, that these facts speak in unmistakable language of his guilt; they tell a story that cannot be disputed, even though one rose from the dead. Murder, though it hath no tongue, yet shall it speak a wondrous language; all the mists are cleared away, the obscurity that surrounded this case has disappeared; it is as though the walls of that bank were lifted up, and the bright September sun should stream in and show the dreadful deed; in the light of all this evidence you see standing over the body of his prostrate victim, his hands dripping with his blood, the murderer of Herbert Field!"

GENERAL BROWN'S CLOSING IN FOSTER CASE.

"Counsel would excite your sympathy for this unfortunate prisoner. I do not complain of this. Think as kindly as you may of the erring; it is natural, it is right. But, gentlemen, even in the matter of sympathy, there is another side to this case. Take this widow and her orphan children, and go to that lone and lonely kirkyard, and standing by the grave of Calvin Hatfield—unmarked by

stone or monument—in view of the great sorrow that this defendant has brought into the world, there write your verdict; when you have done this, the demands of public justice will be satisfied, and a broken law fully vindicated."

EMERY A. STORR'S CLOSING WORDS IN BABCOCK CASE.

[In low, husky tones, but eloquent manner; his eyes beaming with the fire of deep earnestness, his frail form trembling with suppressed emotion]:

"He is not guilty, gentlemen; he is not guilty! I feel an inspiration settling in this court-room, stretching away to Washington, as if to bear the glad news to his devoted family, who, in his humble home, where an anxious wife, now surrounded by her little children, are kneeling, watching, praying and looking to God for his deliverance and joyous return to the capital of his country, that he has served so long, so faithfully and so well."

A. M'REYNOLDS IN STEPHENS' CASE.

"Gentlemen, my work is almost done, poorly as it is, I must trust to you to do a better work. And my little clients (here the speaker laid one hand on each of the client's shoulders, and amid the hushed silence of rapt attention, said:) my little clients, may God bless you! I have done my best to make your names an honor to our state. But oh! how poor and weak my words have been. And you, gentlemen, even now, by your silence and your interest in this case, methinks I hear you say, stop! delay not longer; let us begin this work of justice; stop! that we may rebuke this cruel company; stop! that we may restore these orphans to their own; to that pure character that they will love to honor, a character as pure as they knew her on that last and long good-night, the night before the night of death; stop! that you may wipe away all tears from these orphans' eyes, and plant the sweet rose of a mother's love in their bright young lives to grow, bloom and bless the world for their living in it; stop, that we may right this wrong at once. O God! put it into the hearts of this jury to see the truth; to vindicate a mother's name and a mother's love to her helpless children; to hasten with their verdict and their vindication!"

CLOSING A ROBBERY CASE.

"There is an old, old maxim of the law, believed in by the Greeks, and taught by the Romans, that has crystalized by the use of centuries, and will live as long as law shall govern man; for it speaks

in the language of reason and nature when it says: *No man ever becomes suddenly vile. No man becomes suddenly evil.*"

"Crime, like character, grows by degrees. If this is reason, if good men on oath may be trusted, and bad men should be discredited, if the nearest neighbors, who have known a boy for years, swear he is honest, and the law believes him honest, how in the name of justice can a jury on their oaths, convict one of robbery by the story of a maudlin drunkard and rob a boy of his liberty, and a widow of her son, and find that he has grown suddenly vile, after a life of rectitude. * * Sooner or later homes are broken up, death steals in and takes one after another away, seals up the doors of breath; puts out the light of life from the eyes, freezes the purple current of the veins; but death is not dishonor; it is a thousand times better to die thus than to be buried alive in prison! To walk up and down the little cell, beating his head against the bars like a caged bird, looking out into the darkness and praying for release. To you he looks for his deliverance."

ELOQUENT WORDS OF GRAHAM.

"How consoling it must be to this poor, afflicted man, that he is at last where he has no fear or dread to be; before a jury of his peers, the highest privilege given him by the laws of his country.

"Long enough as he endured the pelting of this pitiless storm. Who does not trust that he will find an asylum in your justice and that justice will be seasoned with mercy, as you yourselves expect to be forgiven? The story of his life is briefly told. He loved not wisely, but too well. Have you not, during the development of this case, often asked yourselves, over and over again, 'Should I have done less than he did, or might I not have done more?'

"Who can tell the capacity of the human mind? Who can overturn the work of Omnipotence? Who can alter or reverse its fiat? If we turn our eyes to the trackless realms of space, which abound with evidence of the vastness, power and wisdom of the Author of all, how are we overwhelmed by the grandeur of the contemplation and shrivelled by the sense of our own meanness?

"Who can return to the Queen of Night her silvery whiteness, or despoil her of her procreant fullness? Who could question the laws which control the movements of the heavenly spheres—compared with which our own is but a speck, scarcely an ascertainable connection? Who can check the light that issues from the sun? Who can control the blowing of the wind?

"These are not within the scope of human power. It is to this category we assign the human mind. It is the breath of Deity; it

is a fire of his kindling. It is the immortal soul, bound on its way to an endless eternity! It contains the elements communicated from its divine source. There is a point to which its operations may be vicious and criminal, but beyond its action is suspended, leaving its possessor to an involuntary execution of Divine vengeance!"

MR. VOORHEES IN COOK CASE, OF HARPER'S FERRY INSURRECTION.

"I am not here, gentlemen, in behalf of this pale-faced, fair-haired wanderer from his home and the paths of duty, to talk to you about technicalities of law, born of laborious analysis, by the light of midnight lamps. I place him before you on no such narrow grounds. He is in the hands of friends, who deplore as much as I deplore, the conduct of which he has been charged. But does that fact debar him of human sympathy? Does the sinful act smite the erring brother with the leprosy which forbids the touch of the hand of affection? Is his voice of repentance, an appeal for forgiveness, stifled in the mouth? If so, the meek, forgiving Saviour of the world would have recoiled with horror from Mary Magdalene, and spurned the repentant sorrow of Peter, who deceived him? If He who made the earth and sun, and hung the moon and stars on high to give it light, and created man a joint heir of eternal wealth, and put within him an immortal spark of that celestial flame which surrounds His throne, could remember mercy in executing justice, when His whole plan of divine government was assailed and deranged; when His law was set at defiance and violated; when the purity of Eden had been defiled by the presence and counsels of the Serpent; why so can you and so can I, when the wrong and crime stand confessed, and every atonement is made to the majesty of the law which the prisoner has in his power to make."

SAN FRANCISCO SARCASM—WESTERN WIT OF HALL M'ALLISTER.

"He is in the front rank of our profession! A great and noble profession would be defiled and disgraced by the presence of such a man! I admit his ability; I admit his ingenuity; I admit his tact. But the first requisite of a member of a learned profession is to be a *gentleman!* It is well in all cases that there should be between the angry passions of litigants, in their contention, a body of professional men, bred and learned in the law, to represent, fairly and justly, the interest of their clients. This case illustrates what a bear garden a court would be, if men of the malignant disposition of this defendant were continually pleading their own cases in a tribunal of justice where they vent their passions and violent

abuse in the coarsest language and the most infamous vilification! Hence, I say, it is a practice certainly honored in the observance, to have between those angry disputants (who may be men with neither respect for their fellow men nor self-respect), to prevent the angry litigants from tirades of foul declamation. I never in all my life have seen such an exhibition! Why, one of those barbarous Bashi-Bazouks would have conducted himself with more decency! He has spared no one, no character, no reputation; epithets of vileness, selected, culled out, carved—a kind of Corinthian column made up of filth! I don't think a man of that cunning, leering, malignant, hang-dog expression, can stand up here and call himself a beauty! The charge on my clients he lays without a particle of proof. But there are some matters that he can not lay to their charge. He can not say that they have been indicted by a grand jury for the theft and embezzlement of $400,000. He can not say they have occupied a felon's cell. They have never been charged with crime, neither have they been taken from the coal hole of a steamer, covered with suit and dirt, and made a spectacle of, as an absconder; not only their person defiled and disgraced, but more defiled and dishonored by a broken promise and violated honor. None of these things have been laid to their charge. There is no language too violent for this man in denouncing the Stanford party and the Finance Company. They are conspirators. They are devil-fish; their presence is mildew and their touch is contamination, according to his statement. And he is pursued by them because he sought to protect the people of California from their exactions. Is not this rather a late discovery? Has he not been one of them seven long years, forwarding their plans, favoring their views, fawning upon their persons as a dog to its master? He was their adherent, their man Friday. Their presence was not then mildew, but a pleasure and a charm. If he could travel in their private car, it was an extreme gratification. When they turned him away, the discarded agent became their inveterate enemy, and the champion of the people. He the champion of the people! He a tribune of the people! Defending the Plebeians from the encroachments of Patricians; standing in the breach, the advocate of the Archer bill! With what arrogance and assumption he would wipe out the evidence of our witness as with a sponge, and make new rules of evidence, while one of the most disgraceful incidents of this case is the flippant conduct and impertinent and coarse replies, of which we can call by high authority, as Lord Brougham, who says: 'Nothing more surely discloses the testimony of a *false witness* than a flippant and impertinent manner of

telling his story.' It is an accepted axiom that only persons, either male or female, whose characters are somewhat dubious, are ever improperly approached. No man who is thoroughly honest, and no woman who is perfectly chaste, ever receives improper solicitations. When such are made, there is always a cause, however slight, as was written by a very eminent lady:

'"In part is she to blame, who comes to be tried;
He comes too close, who comes to be denied.'"

* * * CLOSING A FRAUD CASE (FROM MEMORY).

"The whole story is romantic. The plaintiff, as you have seen, is growing old, a farmer, honest, industrious and ingenious; he has peddled some, and once been a livery man, later became a merchant. In 1877 he started a hardware, tinware and peddlers' supplies store, and later had a branch house. He had little or no education, not even able to read or write, save his own name, and that little learning was a damage to him, for he signed checks in blank, and trusted them to boys to be filled out to his prejudice, and finally to his financial ruin.

"His business career is the very one likely to follow men of his lack of fitness to battle with the storms and financial disaster that came in 1878—that whirlwind of bankruptcy and failure that swept the country like a tornado, breaking down strong houses and carrying away men that had before known only success and prosperity; that time when the whole nation was rocked by the strong storm of financial upheaving; when the broken stocks were thrown on the market, when tramps paraded the country, when men cried for greenbacks and a change—any change—in money matters, till the whole bottom of our financial creation seemed falling out, and the buildings were rolling together in the ruins, then was the failure of this farmer merchant. * * * *

"But of all these mighty firms that went under, and paid ten cents to thirty cents on the dollar, none were arrested for fraud, none arrested for false pretenses; some failed and grew rich; many of them prospered since, and seemed honest. And when this poor farmer failed—a natural failure—what do we find? This we find! They hunt him from his store, arrest him for debt! false pretenses! drive him to Canada! in exile from his family, and there keep him seven months, in poverty and rags, till he almost starved to death, living on seven cents a day, then they send lawyers, and try to force him to tell lies, then sign written statements of lies, then swear to lies, and he refuses till counsel is sent for, and advise him to go home! And he goes home; and lo! all he had is swept

away! He had secured his boy, Clarence, for money borrowed, and his friend for more; but all is gone, and he is poor!

* * * * * * * *

"It was an old Roman Commoner, with shaggy hair and grizzly beard, and bent form and ragged clothes, who, nearly three thousand years ago, said: "Romans, I am from your debtor's prison. Once I traded on your streets, and borrowed and paid again. One day I was surety for a friend, who failed, and I, too, failing to make good the debt, was hurried to the prison cell. Romans, I am free now. It is not for myself I speak thus, but lest others go where I have been, I would abolish such a human curse!" His story moved all Rome! That prison was abolished, and more than thirty years ago, in Pennsylvania, James Buchanan abolished imprisonment for debt, by a powerful appeal in his state, and here in our state the intelligence of the people wiped it from our statute books, and still a barbarous relic of false pretenses remains!

"And here is the Roman Commoner who pleads by his looks and acts, 'I would abolish such a curse.' What has he done? Deep in trade, met every dollar ever due, even to the day of his leaving for Canada, and still the great big greedy firms bear down on him with iron hands, to crush him, and not only hold all he has, but would have you rob him of the last bright jewel of his life—his good name, his honor—and brand him as a fraud and bring him on to prove he is a fraud! This is the grandest audacity I ever saw. It is not enough to take his goods and break him up, but they take his boy's mortgage, his exemption that the state allows, and all he had, and cry for more! This is not fair. It is cruel. It is barbarous. It is inhuman. It is wrong. It is absolutely cruel. It is *mean*, gentlemen!

"They claim he secured us on all he had, while *they* are his friends. *They his friends!* Well, gentlemen, when I am fifty-five, and want a friend, and have had one who trusted me to goods and money, one I confided in, and I secure him, and others get jealous and arrest me, try to put me in the debtor's prison, drive me from home, seven long months in poverty and rags, try to buy me to lie and swear to lying statements, and at last promise to pay my friend, save some for my boy, and I come home, and find their attachments have taken all, and all is gone! which shall I choose for a friend? This is worse than border ruffians do! Let me illustrate by a story:

"It was a hot evening in July, 1860, a herdsman was moving his cattle to a new ranch further north, near Helena, Texas, and pass-

ing down the banks of a stream his herd became mixed with other cattle that were grazing in the valley, and some of them failed to be separated. The next day about noon a band of a dozen mounted Texas Rangers overtook the herdsman and demanded their cattle, which they said were stolen.

"It was before the days of law and court-houses in Texas, and one had better kill five men than to steal a mule worth five dollars, and the herdsman knew it. He tried to explain, but they told him to cut his story short. He offered to turn over all the cattle not his own, but they laughed at this proposition, and hinted that they usually confiscated the whole herd and left the thief hanging on a tree as a warning to others in like cases.

"The poor fellow was completely overcome. They consulted apart a few moments, and then told him if he had any explanations to make or business to do they would allow him ten minutes to do so, and defend himself. He turned to the rough faces, and commenced: 'How many of you men have wives?' Two or three nodded. 'How many of you men have children?' They nodded again.

"'Then I know who I am talking to, and you'll hear me,' and he continued: 'I never stole any cattle; I have lived in these parts over three years. I came from New Hampshire; I failed there in the fall of '57, during the panic. I have been saving; I lived on hard fare; I have slept out on the ground; I have no home here. My family remain east, for I go from place to place. These clothes I wear are rough, and I am a hard-looking customer; but this is a hard country. Days seem like months to me, and months like years; married men, you know that but for the letters from home—(here he pulled out a handful of well-worn envelopes and letters from his wife)—I should get discouraged. I have paid part of my debts. Here are the receipts—(and he unfolded the letters of acknowledgment). I expected to sell and go home in November. Here is the testament my good mother gave me; here is my little girl's picture, God bless her!' and he kissed it tenderly, and continued: 'Now, men, if you have decided to kill me for doing what I am innocent of, send these home, and send as much as you can from the cattle, when I am dead. Can't you send half their value?—my family will need it.'

"'Hold on, now, stop right thar!' said a rough ranger. 'Now, I say, boys,' he continued: 'I say, let him go. Give us your hand, old boy; that picture and them letters did the business. You can go free; but you're lucky, mind ye.'

"'We'll do more'n that,' said a man with a big heart, in Texan

garb, and carrying the customary brace of pistols in his belt, 'let's buy his herd and let him go home now.'

"They did, and when the money was paid over, and the man about to start, he was too weak to stand. The long strain of hopes and fears, being away from home under such trying circumstances, the sudden deliverance from death, had combined to render him helpless as a child. He sank to the ground, completely evercome. An hour later, however, he left on horseback for the nearest stage route, and, as they shook hands and bade him good-bye, they looked the happiest band of men ever seen.

"So deal with this farmer.

"Such men do not steal. Such men are not frauds.

"They claim to be his friends. So do we. We met him in his dire distress. We saw him poor. Talk of jails, talk of prisons, talk of poverty and hunger! It was more.

"Poverty, rags and starvation! Not even the cattle that the exiled herdsman had. Banished from home. Unable to write. Deprived of the letters that the herdsman had. The prisoner for debt was no more wronged than this farmer who has failed.

"Restore him his character, gentlemen; and think, in after years, *how you hardened not your hearts!*"

G. V. N. LOTHROP IN THE REILLY-SCRIPPS LIBEL CASE.

"The individual, however influential he may be, speaks necessarily to a limited audience. The press speaks to a community infinitely larger and wider; it brings to itself a wonderful power of diffusion, and there is no limit, save the limits of human civilization, to which the utterances of the press may not go. I sometimes think of the striking figure of the evangelist in the apocalypse, when he saw a mighty angel come down from heaven. His clothing was a cloud; there was a rainbow about his head, his face was as the sun, and his legs were as pillars of fire; he set his right foot on the land and his left foot on the sea, and he cried, and his voice was as of a lion when he roareth; and when he cried seven thunders answered with their voice. That great-reaching vision saw no utterance wider than that of the thunders as they rolled round the firmament. And so is the utterance of the press. It brings to itself the forked lightnings of heaven, and borrowing the swift wings of steam, there is no limit in human space that bounds it, but everywhere its voice speaks as the voice of seven thunders, rolling round the heavens."

HON. ALFRED RUSSELL, OF DETROIT, CLOSING IN A SLANDER CASE.

[This closing of the McBain case is hardly a true type of Mr. Russell's usually classical language. He is a polished speaker, a man of fine presence, tall, commanding, and very young looking. He is of New England birth and education. He has practiced largely in higher courts—often in United States Supreme Court—and competed successfully with men like Matt. Carpenter, in a three-million ship-canal case. As an advocate he is adroit in the management of facts, and fluent and convincing in speech.]

"Why this eager expectancy? Why this unusual attendance at this hour of the day? Why these anxious upturned faces, waiting for your verdict? You know, and I know. It is because you have seen, and still see before you, a fair young school-girl, just entering into womanhood, a child in appearance as yet, and she craves from you, through her injured father, protection from a cruel wrong? What is that wrong? Defaming her character as a virtuous girl by the utterance of a vile slander—a slander, I blush to say, which implies a want of chastity. Who has inflicted this wrong? Who is the defendant? A married woman! A resident of East Saginaw—that prosperous and flourishing community, where wealth is so rapidly accumulated. A neighbor of this fair young girl; a member of that church of which the mother of this injured girl is also a member; a member of that church in whose Sunday-school this young girl is a pupil. I say, gentlemen, by every consideration which can move the human heart; not only by her youth and tender years, but by her attendance in that Sunday-school, she was entitled to kind, and tender, and considerate treatment at the hands of this woman.

"You know what a man's reputation is. You know that as lawyers, as fathers, as merchants, we must have a reputation which is good—we must have a good name or else we do not get business. No man will deal with a dishonest merchant; no man will entrust his case to a dishonest lawyer—even Congressmen must be honest, if they expect re-election. I happened to spend a month in the national capital not long ago, and I saw a most impressive instance of an illustration of this matter. I saw sitting in the House of Representatives a man of stalwart frame; a man of age; a man of riches; a man who had achieved great works; a man who had built a trans-continental railroad; and that man's reputation was blasted, and where is he now? Lying in his grave in northeastern Massachusetts, killed by a scandal."

"I saw another man there—an eminent journalist; a traveler and politician; a man in the state of New York, where so many years he had lived, and who was almost worshipped by his democratic constituents, and where is he? In his grave, killed by that same scandal. I tell you, gentlemen, slanders of this sort are no trifles; scandals of this sort are not to be breathed away by the eloquence of counsel. And, gentlemen of the jury, if such is the effect upon a man, what is the effect upon a woman? My associate has dwelt upon this subject. I do not need to enlarge upon it, but you know, and I know, that a woman who loses her virtue is despised; and I tell you no verdict which you can give will ever remove and wash out, and efface the stain. I tell you, that so long as this poor unfortunate girl shall walk the streets of that prosperous city, there will be the shrug, there will be the sneer, there will be the undertone of the young man, there will be the shrug of the shoulder of the married woman; there will be the low laugh of the men and women in the barber shops and in the millinery shops as she passes. Wide-spread and far descending will be this stain. A life of purity in the future, such as it has been in the past, gentlemen, I regret to say—such is the nature of human affairs—can never remove that stain. Gentlemen, I tell you this is no light offense; counsel stands up in court and admits the speaking of the words and admits that they were false, and asks for a verdict of *nominal damages*. There was a time when the offense would have been atoned for. There was a time when, if the defendant had acted as a Christian woman should act—I say nothing harsh, I say the truth—there was a time when some simple word of apology, simple word of confession, simple word of giving her authority, simple word disclaiming malice, and this case never would have come into the doors of a court of justice. But she would not give her authority; she would not implicate anybody else; she did not know Mrs. McBain; she did not know the girl; it was a matter of entire indifference to her. How would you feel were you to be ejected from the threshold of a neighbor upon whom you had waited in a kindly manner, as did Mr. McBain and his wife, feeling that wound rankling their hearts, and which will rankle until those hearts shall cease to beat, and the feet of men shall carry them to that 'house appointed for all living.'

"Have you wives? Have you wives and sisters? Make the case your own, gentlemen of the jury, and see how you would feel.

* * * * * * * *

"So it is, gentlemen of the jury, I tell you the average common sense which is gathered in the jury box sees the value of female

virtue. Why, gentlemen, in the range of my experience, I remember another case. It is a case which has only just happened. A large wholesale dry goods merchant in Detroit at the present time, had a very pretty, agreeable and virtuous wife—a near neighbor of my own, an acquaintance of fifteen years. Her husband was absent some portion of the time in the city of New York purchasing goods. The tongue of slander attacks her, and from the mere circumstance of her being waited upon no later in the evening than nine o'clock from a neigbor's house to her own, she is charged by the tongue of a slanderer with unlawful intercourse with that man. In a month every barber shop, every millinery shop and almost every private house in Detroit was full of that miserable and atrocious slander. And that woman to-day is in the asylum for the insane. Her intellect is unsettled; her mind forever gone; her husband's home blasted; the mother of his children taken away from them by the tongue of the slanderer. Do you suppose that any damages which a jury might award could ever repair that injury? Do you suppose that $10,000 or $20,000, would restore light and joy to that husband's house? No, gentlemen of the jury, no more than any verdict that you can give can take away the rankling wound from the heart of poor Mrs. McBain. She told the counsel who asked her here whether she kept a memorandum, or whether she remembered the day, that she did not require any memorandum, she did not require to remember the day. Her daughter, her favorite daughter, her pure, virtuous daughter, had been vilely slandered, and do you suppose to her dying day she can ever forget that language?

You know, gentlemen, how it would be in your own case. I want you to make the case your own. I want you to do unto Mr. McBain as you would that a jury should do unto you in like circumstances. I want you to vindicate the reputation of this young lady, who is even now almost a child in appearance. I want you, if you have any fair daughter, any bright, fair-haired daughter, who is the light and joy of your house, to say how you would feel, how you would do if the tongue of the slanderer had attacked her. I want you to say what amount of damages would satisfy *you*. You know, and I know, that damages cannot satisfy, but we also know that we must relax into a state of barbarism, as it were, and each one take the law into his own hands, and take away the breath that animates the body of the slanderer, administer corporeal punishment, or else come into court and lay our grievances before a jury. This is the sole remedy known to the law. Damages, gentlemen of the jury, pecuniary damages, is the

only compensation which the law recognizes. Imperfect as is the retribution, this is the only method which is known to the law. Now, gentlemen, I want you to say what sum will vindicate this woman's character, what sum will take away that injury from the father's heart?

"Gentlemen of the jury, vindication is what we want. But how is vindication to be expressed? You cannot express vindication by 'nominal damages,' which my brothers come here and beseech at your hands. You should say, inasmuch as this thing will be spread around more and more in consequence of this trial, let the same persons who hear of the trial hear that a righteously indignant jury who heard the case, gave a verdict of $5,000. That is the way you can repair this injury, so that every person who hears of the trial, shall hear also at the same time of the condemnation of the slanderer, and the endorsement of the purity of this young, virtuous girl."

Verdict $2,500.

ARNOLD'S CLOSING IN THE MARY ANN WHEELER CASE.

On October 14, 1852, John M. W. Lace, while looking in the window of Hopkins' book store on Wisconsin street, Milwaukee, at some political caricatures, was asked: "What do you think about politics, John?" Lace replied, "It's all a d——d humbug." Instantly a pistol shot was heard, Lace fell dead to the sidewalk—shot through the spinal marrow by Mary Ann Wheeler, who was at once arrested. She was defended by Jonathan E. Arnold of Milwaukee, Wm. H. Tucker of Sandusky, Ohio, and Wm. Abbey of Cleveland, Ohio. District Attorney A. R. R. Butler was assisted by Hon. H. L. Palmer.

Judge Arnold, then an eloquent advocate, made the closing argument for the defense which began as follows:

"How strange are the vicissitudes of human life! Two persons, hitherto almost strangers, become suddenly the victims of a train of circumstances by which one is hurried to a premature grave, and the other, after months of incarceration in a loathsome jail, is arraigned before a jury of the county on a charge of willful murder. For what wise purposes these vicissitudes have been made a part of the destiny of man has never been revealed to us by the Author of our existence. Had He apportioned the incidents which beset our path to the degree of our rank in the scale of created being; had He subjected us only to the whirlwind, the earthquake, or the tornado, it might have seemed to our limited capacities some

slight proof of the superiority of our nature. But we are humbled to the dust when we reflect that the very worm that crawls at our feet, that his life is held by as strong a tenure as man in all the glory of his strength."

"It has been supposed by some that the fear of death was implanted in the constitution of man in order to restrain him from the exercise of that larger share of power with which he is endowed. But all other animals upon our globe have been created with limited capacities and limited spheres of action. Their power is present. It does not extend beyond themselves, and hence the fear of present bodily pain has been supposed to be sufficient to restrain them within their legitimate spheres. But for man, with a body framed for vigorous exertion in every clime, with a mind unlimited in capacity and unceasing in effort, for man whose power extends, not only to the present, but through future generations, some stronger restraint has been necessary than the fear of present pain. It consists in the terms of that unknown region to which we are rapidly hastening. A well-spent life, the affections, the sorrows and tears of those we love may persuade us of our merit, the principles of proud philosophy may sustain, the hopes of a divine religion may console us, but still nature will assert its dominion, and we instinctively shudder at the silence and gloom of the grave. There sensuality, ambition, malice, revenge, all passion is laid low in the dust. There the tenderest earthly ties are snapped asunder forever. There Alexander left his worlds unconquered and Crœsus parted with his gold. There Bacon forgot his learning and Newton descended from the skies. There friend is unlocked from the arm of friend, brother from the arm of brother. There the father takes the last look of the body of his cherished son. There the doting mother day by day and night by night moistens with her tears the clod that embraces her darling infant in its bosom. Stoics may reason, philosophers may speculate, the hardened may scoff, the thoughtless may smile, but there is a voice from the grave that speaks, that will be heard in every human heart."

"But awful as is the fear of death, the grave and the future, the history of our race illustrates nothing more clearly than that man is still prone to error and crime. Arson still applies the midnight torch; burglary still breaks stealthily into our dwellings; insatiate lust still preys upon the young and beautiful; murder still stalks abroad undetected, unpunished. Hence, gentlemen, you see at a glance the very foundation of our criminal law. It is based upon the necessities of our condition; it is founded upon the very first principle of moral ethics and is designed to be in subserviency to

the laws of God. The rule of ethics is that every man is entitled to do whatever he pleases, so long as he does not interfere with or trespass upon the rights and the equal privileges of others. Hence our laws, both civil and criminal, are based upon the necessities which arise from social organization or from the very idea of government. They are based also upon the very idea that the natural condition of man is that he is possessed of reason, of intellect, of judgment, of conscience; for were he not, laws designed for reasonable and intelligent beings, for reasonable beings, then indeed would be futile and absurd. Responsibility, to use a comprehensive term, is at the very bottom of all law."

The defense was moral insanity. In the exact language of Mr. Arnold:

"She was seized with an irresistible impulse to kill John M. W. Lace, and was and is unaccountable for the act." * * * "And then and there, with her own right arm and her holy arm hath she gotten herself the victory." * * * "She was the subject of an overwhelming, irresistible impulse, which, at the moment the act was committed, wholly deprived her of that free agency which makes her responsible to the law."

"Whatever may be your disposition of her fate, she will meekly bow to her doom. If you shall find her guilty of the crime of deliberate and premeditated murder, she will meekly submit, waiting only her appeal to that tribunal to whom the motives of the human heart, the mysterious operations of the human mind are known with perfect knowledge. If you should restore her to liberty, indeed shall her heart leap for joy, and her whole entire life shall be devoted to God and her race. Restore her, restore her to liberty; restore her to her family and her friends, restore her to the open arms of that young and innocent sister, whose devotion to the defendant in her lonely cell for months is deserving of immortal honor. Restore her to the arms of that doting father, that the sun may again shine upon his life, and may cheer his pathway to the grave; that his declining years of life, that have been overcast with misfortune and with poverty and with wretchedness, may be cheered at last by the presence and the love of his daughter; and, gentlemen, restore her to the mercies of our God in this mortal life, that her time for penitence and probation may be extended as God shall will it; and, rest assured, that from this time forth—day by day, and night by night—the prayers of her heart shall ascend to God that the choicest of heaven's blessings,

which I now invoke upon your heads, shall remain and abide with you forever."

The first jury disagreed; on the second trial she was acquitted.

GEN. RODMAN'S CLOSING WORDS IN BUFORD CASE.

"The gun, instead of being held up to the shoulder, is held to the hip, and the entire twelve buckshot go into his body. The same deliberate Tom Buford that shot at Thomas, the same deliberate Tom Buford that clubbed the eyesight out of Ulysses Turner, the same determined man that had his own way against all opposition, fired the fatal shot, and Judge Elliott was dead.

"Judge Elliott was as noble a man as the Lord ever created; a good, noble, royal gentleman as ever drew the breath of life; handsome in person, weighing one hundred and ninety pounds, walking the streets with the tread of a nobleman, as gracious and polite to the humblest of men as to the greatest magnate; a clear, strong intellect and the warmest heart. This was the man that was struck down to earth without a word of warning. The gun goes off as clear as a bell, and one of the best men that the world ever knew dies by the hand of an unmitigated assassin. Now, tell me, that because he could not sleep, because he fell in love with a beautiful woman, because in the silent watches of the night he had communication with his sister, this man, having no business to keep him in Frankfort, nothing to disturb him, naught to do but enjoy himself—tell me why this man shall escape the penalty of the law for this terrible crime? I can not furnish a reason why he did this thing. I wish I could. It is sufficient for us to bend to the exigency. It is done. He has been indicted. He has had a fair and impartial trial. And if there was ever a case that came under my observation that merits the severest punishment that the law inflicts, this case merits it.

"Oh! how the hearts of men stood still when Elliott fell in Frankfort's streets! * * * But, gentlemen, while you have honor enough to discharge your duty, I beseech you, have courage enough. I appeal to you, gentlemen, by all the considerations that bind us to law and order. I appeal to you by your love of the constitution and laws of Kentucky. I appeal to you by the desire to see the reinstatement of law and order among us; I appeal to you to say that justice shall be done, whether it be a case from Frankfort or anywhere else; whether the prisoner be the scion of a noble house and distinguished name, or whether he be of the lowliest condition. I appeal to you, let your verdict be such that justice shall be rendered and the murderer punished.

"Is there nobody else to be considered in this case but Buford? I fancy I see the poor widow of our once noble judge, as she ran shouting out to her dead husband lying there, his heart's blood streaming from his breast. I fancy I see her as she left in her widow's weeds, with her head bowed down in grief as she entered the carriage that was to carry her to her humble mountain home, where she now lives, sad and alone, and friendless, except some distant relations of her husband's, to convey her away from Frankfort, where she had lived so happily with the man she had proudly called her 'Mountain King.' And if any man was ever endowed by nature and cultivation and worthy of the name, it was John Elliott. And the man who slew him, they say, was morally insane. I ask you if it has come to this, that considerations of public policy and safety are to be so disregarded. And, if they are, tell me so; tell me that all men are to defend themselves by the level of might against right, and then we shall know how to take the strongest measures to protect ourselves.

"Gentlemen, do your duty, and give a splendid lesson to Kentucky—a lesson that shall be written in letters of fire on the minds of her people—a lesson that this, and all future generations, shall rise up and call you blessed, and the verdict of all time shall be, 'Well done, good and faithful servants.'"

SOCRATES' CLOSING WORDS TO HIS JUDGES.

"Farewell, my judges; it is now time to go away; for me to die, for you to live; but which of us shall come to his reward and receive the homage due to an upright conscience, is within the sphere of an infinite and unknown God."

GEN. BRECKENRIDGE CLOSING IN BUFORD CASE.

"He watches for his victim and executes his pre-determined plan, and in the trustful hardihood of a nature that always despised the law and held the restraints of civil order in contempt, he tells the truth; that truth upon which you are asked to act, and by which your verdict must be dictated. And yet his counsel bear the dead body of the slain judge into this court of justice, with the ermine which he wore so stainlessly all reddened with his heart's blood, flowing from that gaping wound, and placing by this dead body the prisoner, bid you look from the torn heart of the slain to the face of the slayer, and upon your consciences declare that the hand which struck the blow was that of a madman!

"With uncovered and bowed head and saddened heart, I stand by that body and appeal to you to do your duty. Make room for

the stricken widow, who pleads only for the right! Kentucky comes and prays that you will do justice, justice that will be a lesson forever in her borders.

"Two hundred years have passed since the life of a judge has been taken by lawless violence. Kentucky, sad in hope for her murdered sons, demands of you such an example that two hundred more years shall pass in security to all officers of the law — violated without an excuse in a law-governed state. The husband says, 'I am protecting my children only through the tender mercies of its officers, whose persons must be sacred; my juries must be true to it that our law is ample to protect my officers.' I trust a brave and intelligent jury, selected from the body of an enlightened community, to remove from your verdict all pleas of sentimentality, of fine phraseology that carries evidence of insanity and remembrances of crime and one unwhipped of justice.

"O, gentlemen, gives us one more crowning proof that trial by jury is not a farce and sham, but that justice can be enforced by a Kentucky jury according to the law and evidence, and with a full sense of the solemn value of that duty to be performed.

"This is not my voice, but that of our brother, who pleads with you by the side of this dead judge and this living prisoner. I have no right to do more than pray that God will give you strength to do your duty, your whole duty, so that in His sight you can stand upright, and if the verdict which your consciences require deprives him of life, he will owe to you what he refused before his blameless visitation, to make peace with that God who will judge each of us for the just verdict in this trial."

MAJOR PENNIMAN, OF DETROIT, CLOSING A MURDER CASE, 1851.

"The clock has struck twelve, the city sounds are silent, the lights have been extinguished, the night is freezing cold. In the back room of a den of shame, four women sit gloaming around a fire which causes lights and shadows to play upon countenances that notwithstanding the dissipations of the day, bear traces of beauty and womanhood. Instinctively they feel that sympathy which makes the whole world kin. One tells a story of childhood, some strange adventure which recalls the scenes of other and better days; another rehearses the dreams of youth, and perhaps tells of a parent's blessing or a parent's curse; while another drops unseen a tear over hopes which sleep in the grave of memory, while the other tells of ghosts, for superstition is often the only remaining attribute of innocence. An hour has passed and all is silent; still

they sit, one waiting for the other to break what seems an unnatural spell.

"The deceased, though in full vigor of manhood, has but a few hours to live; when Minnie, turning her dark eyes full towards him, says, "Johnnie, do you believe that spirits of the dead ever return to earth?' 'Never,' replied the deceased, 'for once upon a time, in company with three others, at midnight, *about this hour*, I entered the peaceful home of an old man and woman to secure the treasure which industry and frugality had acquired,' but finding nothing of particular value, we seized them, bound them hand and foot before they could realize that they were awake, and when we had exhausted all efforts to force from them the desired secret without avail, we tortured them by placing their feet against a red-hot stove until they were burnt to cinders, and a few days thereafter they both died from their injuries, and I know that if the spirits of the dead could come back to earth, I should have been annoyed by the ghosts of this old man and woman; yet I have never seen or expect to see any such thing.

"O, no, no! conscience has never knocked at the door of my heart; I have seen no ghostly hand pointing at me; fancy's piercing sound has never so much as whispered in my ear the names of those I murdered. The curse of Cain has never dashed my spirits, and my slumbers have never been disturbed by forebodings of Divine justice. And yet you are invited to think kindly of John Ferguson, in order to condemn his wife for defending herself when she had every reason to believe his huge knife at her very throat.

. . .

"Gentlemen, the angels of your better natures will rebel against any alliance with the spirit of such a man. He was entitled to no respect while living, no vindication when dead. You should rather turn to the prisoner, who has become emancipated from the thraldom of such a wretch, and in the spirit of divine manhood, say, 'Go, and sin no more!'" . . .

WM. C. P. BRECKENRIDGE'S CLOSING IN A MALPRACTICE CASE (KY.)

"And this is the fatal conclusion—this the fact, attested by science, and proven by the testimony—that on that early August morning, 1880, this doctor defendant burnt out the eye of this woman, the plaintiff; and here I close, for I have not the heart to weigh in words the value of an eye destroyed. She is a poor man's wife, so poor that, with her own hands, she cooks the daily meals placed on the table of their humble home, around which the once

happy family now gather with the shadow of an early darkness, to her in prime of womanhood. A mother's heart made sad by this mournful dread of total blindness—already half complete—I will leave the long, dark nights of pain, the throbbing agony of all during the horrible burning out with lunar caustic—torture so intense, was forgotten in the mental anguish and thought of utter blindness. She was but thirty-four, and fair and comely; the mother of these bright young girls, and though her home was humble, it was full of hope and happiness. She was a poor man's idol wife, but her lot was cast in this beautiful, bounteous land, where life and health are almost paradise; where the fatness of the fields brings riches to the industrious. There was hope in their labor; there was encouragement; there was life; and in an instant all went out! by one act of the defendant. Oh! gentlemen, what money can compensate for her hours of unutterable grief? Fathers, what would you sell your daughters' eyesight for? Husbands, struggling for independence, laboring from dawn to dark, repaid by the sweets of home, and all the joy it brings, how value you your own wives' eyesight? If it were only the constant fear of blindness during life, with which she is doomed to live, what would compensate her for such misery? But to know in every day, and every hour, in every joy, in every labor, the latent danger of being blind; that every look on God's sweet smiles in nature, and his sweeter likeness in those she loved might be her last. What is all this beauty worth to you? Add to this the dread of almost certain blind old age, and poverty—for only with her help was fortune possible—hope banished before its noon, the future blindness of posterity. Shut your eyes, and see your best beloved grow old, and poor, and blind, and then write your verdict, and write it with a liberal hand. These 'windows of the soul'—these gleaners for the heart, how they bring us joy and wisdom and fond recollection. How I remember one spring day, after a long ailment of my own vision, almost blind and saved (confined in darkness and released), when the buds were swelling, the grass brightening and blending its greenness with the wild flowers, and the fields all decked in beauty, with the clear streams glistening in the sunlight, and birds full of music and melody that have never left my mind, in thanks to the Creator and giver of all these priceless gifts; how I thanked Him for eyesight; and while this great world lies around me, and that clear sun shines above me, and those I have loved are dear to me, for all these gifts no scales would weigh their priceless value! Yet this gift of yours (in damages) is her only remedy. You can not, alas! alas! restore this darkened eyesight; but you can secure

her some comforts, for books and schooling for her children. You can stop the gnawing pain that she is but a burden. You can place *a staff in her hand to lean on in her lengthened hours of darkness.* Will you refuse, and turn her out injured by loss of sight, and banished from your mercies, so that when you recall this day, it may haunt you in solemn, silent reproach, and reproach forever! or will you do some little act to recompense this wrong, and brighten all our memories with one day's work, well done!" Jury stood eleven for heavy damages, but disagreed.

EXTRACT OF AN ELOQUENT OPENING ADDRESS BY HON. LEONARD SWETT, OF CHICAGO, IN THE TRIAL OF R. C. SLOO, SHAWNEETOWN, ILL., 1857.

"Applying these principles to the case at bar, we ask our opponents whether this act of killing seems in unison with the character and habits of the mild and amiable Robert C. Sloo? To the contrary, it is a departure so wide that it cannot be accounted for upon any other reasonable hypothesis than that of disease. I will not deny that good men may become corrupt, and he of tender heart inured to bloodshed and crime. The experience of our nature tells but too truly

' * * * how easy 'tis to fall,
How slow, how hard to climb.'

But the rule of this change from virtue to vice is by slow degrees, and not sudden transition. Look out upon the murderer's face, furrowed with crime. Was that record written there by God's creating hand? No; it came slowly. His cradle was as pure as any infant's. Love soothed his tender cries, and affection clasped him fondly to her bosom. When spring time called him forth to revel in its light, the violet he plucked was no more pure than he. In after life, as he bids his early home good-by, watch the tear of tenderness that starts unbidden in his eye, or hear that prayer to Almighty God for guidance and aid that flutters on his quivering lips. Ah! little does he dream that the summer of life, with its mists and heat, is upon him, and that its gales will chase storms and shadows over his path. Faint thoughts of evil, like the distant cloud the sunlight gilds, come first. He yields. Henceforth his course is slowly downward. One transgression paves the footstep to the second. Crime sweeps over him, wave upon wave, and surge upon surge, until the remembrance of early purity in the distance of years only

' * * * Seem
The relics of a splendid dream.'

"Not so this defendant. The character of this act is a change from his gentleness of heart, as unnatural, as impossible, by sudden transit, as from the home of Dives across the trackless gulf to Father Abraham's bosom. Its very baseness pleads in his defense, and goes far to illustrate the tendency of this disease that for years has drained the substance of his life. The proof upon the subject of this disease will be clear and unquestionable. Its tendency is to engender suspicion and mistrust, to make the sufferer avoid his friends, become shy and distrustful of everybody.

"His true relations to the world become perverted; he views his friends with distrust, and exaggerates the number and bitterness of his enemies. Just then, Hall's hostility appears. I will say nothing to blacken his memory, but it must necessarily be known to you that he was hostile to the Sloo family, and made remarks injurious to their reputation. He talked about them in the streets. He said bitter and slanderous things about the defendant's mother and sisters. He abused the defendant himself, and openly and on all occasions assailed the character of his father. Not content with this, he published his vile slanderings in adjoining counties and spread them broadcast throughout your own. No man, however strong and vigorous in mind and body could have heard these things without feeling his hot blood boil within him.

"You, sir; you have braved the frost of years; may have a daughter, the pride and solace of your age; at her jocund laugh your steps move lighter. You palliate in your own thoughts your very wrongs by remembrance of the virtuous love you bear her. More tenderly than the choicest flower your homestead yields, you have watched her growth, fresh in her beauty and bursting in her bloom. Let the spoiler come to her purity of heart, or the fair fame she enjoys, and I mistake the flash of that gray eye, if the spirit of the pioneer would not be roused in her defense. You, sir, younger in years, may have a father, who guided your footsteps in the feebleness of infancy, and to whom, in return, you owe allegiance and protection. If you should see him assailed by vituperation and slander, or accused by dishonesty and wickedness, of deep and vile guilt, would no unpleasant feelings be aroused? Doubly so, in this young man whose brain was diseased, and diseased in a manner that provocation touched his heart as the coal touches the powder to explosion. His very disease inclined him to be suspicious; to suspect even his friends. Whenever, then, the man appeared who attacked the reputation of father, mother or sister, it fed that morbid feeling; and the provocation and the resentment connected themselves the one to the other, as the ivy to the oak,

drawn thus together by the yearning tendencies of the one and the kindly roughness of the other. This is the secret and the truthful key to this most lamentable tragedy.

"Gentlemen, you are about to listen to the evidence for the defense. I thank you one and all sincerely, both for myself and client, whose hunted life finds shelter in your hands, for the kindness and earnest attention you have given me this morning. I have extended my remarks longer than I intended. I only plead the paramount importance of the cause I advocate as an excuse for so doing. I am about to leave the case, so far as its opening is concerned, with a firm conviction that you will attentively listen to the truth, under whatever form or name it may come. Your province is a sacred one. God has breathed into this young man his own heavenly gift of life; through his infancy and youth; through his wanderings and efforts of earnest endeavor, even in this fearful act; and in his prison home, where the death damp gathers and the sunshine is a stranger guest, he has kept that life he gave, and now has suffered you to be called from your various homes to receive it into your keeping—to stifle in choked mutterings, or to extend, as to your poor judgment shall seem fit and proper to do. You tread upon holy ground. In humbleness approach your task, looking constantly for guidance to that throne in heaven whose sovereign 'doeth all things well.'" (Acquitted.)

[Mr. Swett's exhaustive and eloquent argument in the Hanniford self-defense trial, at Chicago, in 1880, is reluctantly omitted, as anything less than an elaborate report of the trial would not satisfy the present divided public sentiment on the subject.]

JUDGE CURTIS IN THE HELMBOLD CASE.

"The proof is ended and the story is told, and I commit the destiny of Dr. Helmbold to his judges.

"God in his providence has permitted him to view the terrible calamities by which, more than other men, he has been tried.

"He rises in this dark hour superior to the machinations of those who have endeavored to destroy him. He invokes the administration of justice and the protection of the law. In his marvelous career how vividly do we see depicted the uncertainty of earthly prosperity and grandeur.

"Of obscure origin, by his industry, energy and capacity he founded a business that extorted revenue from all the nations of the earth, that brought him a golden harvest, as the reward of a commercial enterprise so broad, liberal and comprehensive, that while it had its origin in the great republic, it lost not sight of the

remoter realms of China, and the peoples dwelling on the banks of the Ganges. His foes have stripped him of his estate, have alienated from him the wife of his bosom and the children of his loins; they have confined him in those earthly hells—the asylum for the insane—and with merciless cruelty more conspicuously wicked than the conduct of the unnatural children of King Lear, they have sought to deprive him of his reason, and send a madman's soul shrieking to the bar of God. In fact they concentrated upon his unhappy existence all the calamities that can affect the human species.

"Rescue him, gentlemen, from the peril of despair; and when you and he appear before the infallible judge, you will have the supreme consolation of knowing, that because you turned not a deaf ear to the voice of mercy and justice, you are not forgotten by one who never errs. (He was declared sane.)

A WESTERN LAWYER CLOSING HIS FIRST CASE (FROM MEMORY.)

"I feel that I can not say more, gentlemen, and yet when I turn to this unfortunate young man, who has trusted me in all his trouble, I hesitate to close. Liberty to him is a precious boon; he longs to be free, and return to his home and friends who surround him here to-day.

"In the name and honor of these people who do not desert him in his sore distress, take him. I would put his hand in your hand, and ask you where will you lead him? Will you take him to the doors of a dungeon? Will you close the walls of death upon him forever? Will you snatch from his grasp all that is dear to him in life, in this bright and beautiful world of ours, or will you free him? Will you bind him in irons, or loose him and let him go free; and say he may be wrong, he may be right, but not by my vote shall his young life be blotted out forever!

"I know how often your minds have wandered home; how, sometimes, in this big, dreary city you would almost long to see even a favorite dog from the old farm house—from your home! You have counted the weeks, counted the days, and will soon begin to count the hours when you shall take your little girls to your arms and bless them, and tell them how you longed to come before — and you will soon forget this little stay in town; but he will not forget it? If you twelve men agree that he is guilty (and nothing less than *twelve* can convict him), you may sleep as soundly as you will, but on some night, some dark and cloudy, dismal, rainy, sleety, dreary night, when the angry winds grow wild, will you not think of those dismal cells where

women call in pleading tones for mothers, where lightning flashes light up the dark faces of despair, where men and women live in hopeless agony, and wrinkle and grow old in pain, and sometimes die a martyr's death.

"But, gentlemen, I am nearly done; I should say no more. And have I said enough? If he were your boy would you not have me linger and say more? Do you realize what liberty is? To you who walk the streets and smell the fresh spring flowers, and hear the songs of birds, and drink in the bright, clear music of the morning, do you know how good it is to live? That poor fellow that was released from Auburn prison, and halted as he walked out, seeming to feel he must yet come against walls and grates, that had met him sixteen long years, when he looked up and saw the sun in heaven and tested the pure air, said: 'Oh, how sweet the air smells! I never knew the sunlight was so good before!' And then he would walk out and back, and move his arms and limbs and almost drink the sweetness of the day!

"We do not know, gentlemen; you have been here a month from your homes. Have you seen through the bars a haggard form of misery praying for release—an innocent form. it may be, inveigled into sin, and suffering the shame of accident, or evil company. Why, gentlemen, it is a lifelike picture to repeat their story. Their moans are like the wailing of the damned! I have heard them from the prison-keepers by the hour, to study the story of a man in irons. I've read it from Hugo the Great, and yet but faintly realize it.

"O, men, take this captive, and where will you lead him? Where will you leave him? Take him where you will, you are his judges. I will leave you, and leave with you this fair-haired boy, a wanderer from the paths of duty. I will leave you as strangers part on a foreign shore, never to look in your honest faces, till the summons of the mighty judge shall call his children home, and on that awful day will be said to us, and to all of us, have you remembered mercy? We will meet each other there; our masks will all be torn away, the books will be opened, the volumes will be read, the question put to each: 'Have you remembered mercy?' And how can you answer if 'tis said: 'They that judge without mercy shall be judged without mercy!' Let it not be this unfortunate that shall hinder mercy in your behalf, that shall enforce the lesson: 'Worse than bloody hands are hard hearts;' but may your work to-day plead in touching tones in your behalf, that what you have done to others, you are willing should be done to you. (Acquitted.)

ARNOLD AND RYAN CLOSING THE HUBBELL IMPEACHMENT CASE.

In 1853, the late Judge Levi Hubbell, the Judge of the Circuit Court for Milwaukee County, was impeached by the Assembly for high crimes and misdemeanors in office. The trial was held in the Senate Chamber at Madison. The charges were eleven in number. The preliminary proceedings occupied six days. Mr. Ryan made an opening argument on all the charges, occupying nearly the entire day. The testimony for the prosecution was then taken, occupying till June 27, when Mr. Arnold made the opening argument for the defense, and the examination of witnesses continued till July 5. On that day Mr. Knolton commenced summing up for the defense, occupying two days. Mrs. Hubbell was at that time lying ill at the house of a friend near to the Capitol. Mr. Arnold made the closing argument for the defense, occupying an entire day, and concluded as follows :

"And, in yonder cottage, almost within the hearing of my voice, there is yet another who is waiting, with intense solicitude, the result of your deliberations. She waits, in unshaken confidence and devoted love, for the accused. She is in deed as well as in law the wife of her husband, and she would clasp that man to her breast, though her arm were in a flame of living fire till it burned to its very socket ; her prayers are all around you—her hopes are all dependent on you. On bended knee, and with eye uplifted prayerfully to Heaven, before you, she implores you : 'O, give me back the husband of my youth ! I can surrender him to God—I can surrender him to my country—but O ! spare the blow which, while it destroys him, dooms me to lean upon a broken reed, and to a life without a hope.' Fell blow, indeed, which would destroy the prospects of one so young and beautiful, which, in a moment, would

> Change the current of her sinless years,
> And turn her pure heart's purest blood to tears.

Her arms are outstretched to receive him, and their embrace will be warmer and purer, should the judgment of this court vindicate the honor and fame of her husband in the judgment of the world."

MR. RYAN'S CLOSING.

He said : "It was said that this trial, that the evidence in this cause, had demonstrated this man's innocence, to those who doubted it before ; that the ordeal of trial had demonstrated his personal

and judicial purity to the world. Why, then, if thus sustained by universal judgment of the public, by the foreshadowed judgment of this court appointed to try him, by his own conscience; why, thus perfectly sustained in coming pure out of the fire that tried him, with the angels of heaven to watch by him here in the furnace in which his innocence is only proved; why kneel to this court in cringing appeals? Why, Mr. President, had I yesterday to hear the same pathetic declamation, to see the same mockery of tears, that I saw and heard upon the trial of Radcliffe, the murderer? Why, upon this trial of a judge who stands upon his innocence, of a judicial officer who here says that he is innocent, who boasts that all the disclosures here have but tended to demonstrate his innocence, to redouble the faith of his friends in his innocence, and to convince even his enemies of his purity; why, if all this security of innocence was here, were the privacies of domestic life dragged into this court to move the heart of justice; crying craven, weeping this court to have compassion upon the innocent victims of his guilt? It was bad taste; it was bad feeling. And knowing the learned, eloquent, and able counsel, as I know him, I cannot think it was the prompting of either his taste or his feeling to do it."

Judge Hubbell. "It was not my taste, and you know it."

Mr. Ryan. "I know the gentleman. I know the learned counsel well. I ought to know him well at this time of day; and I do not believe, when he said in presence of this court, that he stood here not merely as counsel, but that he stood here as the defendant's personal and judicial friend, I do not believe that he would of himself have cringed to this court, that he would have invoked the mercy of and compassion for women and children, the dead and the unborn, to mitigate the judgment of man upon man."—***Judge Hubbell was acquitted.***

PUBLIC SPEAKING.

The very latest style in speaking is the Beecher, Phillips, Lincoln, Chamberlin style of animated conversational tones, with something to say worth hearing, and said with intense earnestness as to enlighten, illumine and convince an audience,—the loud or very dramatic tones become tiresome.

Of course, the President with his manuscript in one hand and clenched fist in the shape of a fighter, by his very intensity secures a wide hearing, but McKinley was just as convincing in the conversational method, and to put it tersely, if one can use a broad sword or a bayonet, he need not use a razor. It depends on the man and the occasion. But what is said more than how said is most effective—as witness, Attorney Littleton, less eloquent and far less flowery, yet successful—where Delmas only divided a jury, one made a reputation for eloquence, the other gained a victory and saved a prisoner to his family. Yet, who knows who did the finer service? Not one single conviction of that kind has occurred in two hundred years in our country, and was it a case for conviction, or was it a case for *self-defense?*

Public Speaking is more and more forestalled by the Public Press, and is a little on the wane in many cases; occasionally in cases like the Thaw, or the Haywood trials, a forceful speaker is of signal benefit in moulding public sentiment, as did Darrow in Haywood's trial in a brilliant victory, or Folk in the St. Louis bribery cases, and it seems that the graft in Philadelphia, Cincinnati, St. Paul, Toledo, Milwaukee and New York is just now affording a rich field for the finer advocates.

PREPAREDNESS.

I listened to Bishop Williams as he read with deep interest his lecture on Predatory Riches—where the matter was even more eloquent than the delivery, and both were brilliant. I heard Seymour give his twelve lectures on leading characters in history, like Cæsar, Mark Antony, Lafayette, Thomas a Becket and the like, and a more pleasing effort altogether, I have not witnessed, and am assured of the effect of both of their methods. *This is it in A, B, C, form:*

(a) Think out, read up, fill up, master and commit data, and any rare saying or quotations.

(b) Write out in longhand so as to measure the extent, order and scope or limit and what it is to cover and include, not omitting a story or laugh or two—and

(c) Make *bold* notes, extending say one to twenty, and number them, then commit the notes to memory (a short task) *then with notes in side pocket and nothing* in sight, rely on what you say by what you know.

Begin calm—grow warm—end with a storm! Yes. Please with a paragraph; attract by an illustration; convince with facts and a word picture, but finally paint on the memory a clear likeness of your theme—the rest is all practice.

THE SECRET OF FAME.

"*There is not less wit nor invention in applying rightly a thought one finds in a book than in being the first author of that thought.*"—BAYLE.

The real secret, or genius of fame, is in loyalty to duty, *preparedness* for duty, and unselfish adherence to some great plan or problem to solve which will better the world when the goal is attained. Lincoln had a purpose in his steady, far-seeing plans of preserving the Union, and no one could swerve him from duty; a less consistent course of conduct—a little less caution and wisdom—would have made a war with England, France and Spain, which he wisely averted by patience and diplomacy.

No one would have known of Sheridan but for his ride to Winchester, and the horse he rode was a match for his master—

> By the gleam of his eye and his nostrils play,
> He seemed to the whole grand army to say:
> I've brought you Sheridan all the way
> From Winchestertown, to save the day.

The sturdy Jap uttered a strong truth when he cheered his brave men who were about to blockade Port Arthur by saying, as they drank a silent communion together:

"If I had a hundred sons, I'd send them all in such an enter-

prise; If I had but one son, I'd bid him to go alone. * * * I would not have you think lightly of your lives, for not one in one thousand can expect to return unhurt, but, I would have you think of your *duty first* and your lives afterwards. * * * And if you lose your right arm in this enterprise, operate with your left; if you lose both arms, operate with your feet and legs; and if you lose your arms, and hands, and legs, then operate with your *heads*, but win the enterprise."

They won, and won a lasting fame.

STORY OF DAMON.

You know the story of Damon; how he offended the King of Syracuse and was condemned to die by the ax, and begged for three days of life to attend his sister's wedding, while a friend remained bound in his stead—and a friend was bound in his place; how Damon attended the wedding and started back on the third day; how he looked up at the sun, saying: "If the sun should go down and I reach not yon town, my friend must perish for me," never thinking of himself he rushes on.

The stream he had crossed on a high bridge has risen to a flood; the bridge has gone down before it, yet he fails not, falters not, halts not, but plunges on, and by a mighty struggle reaches the opposite shore. He could have faltered at the bridge, but, more yet, he meets seven robbers and falters not, but with a bludgeon he lays three on the ground and the rest hurry off in dismay! * * *

The sun is nearly down—the scaffold in sight! already the victim stands bared for his fate; already the deathsman stands armed for the blow. But, hark! What a sound is uttered around saying, "Stay, it is I, it is Damon for whom he was bound!" Then the King is touched and calls Damon and Pythias to his side and releases both if they will make him a third friend.

There is no more loyal character of friendship in all history, and no character better than that of Damon points the road to fame. Had Damon faltered at the bridge, or failed in courage with the robbers, or fainted at the sight of his friend on the scaffold, we would have *never known that Damon ever lived!* It was his loyalty and fidelity, his faith in right and duty which made him and Pythias immortal as symbols of friendship for the world as long as loyalty shall be known and honored by mankind.

LINCOLN'S GREATNESS.

A hundred years will not pass by before a lasting monument will be built, *in Kentucky*, to mark the fame of Abraham Lincoln; and why? He was born and bred a Southerner, in Kentucky, of Kentucky parents, and lived in Kentucky up to the age of seven. True, he was raised in Indiana, developed in the hardships of that middle state, where his mental and physical *preparedness* took form, and matured in Illinois; but he was a thoroughbred Kentuckian full of the chivalry, courage and fair play of a generous, stalwart race of intellectual athletes.

If a single question were put to twenty men: which was the better learned man in *books*, Washington or Lincoln? a majority would say Washington and be all wrong in their conclusions. Washington was a wealthy man, refined in manners, pleasing in appearance and commanding in dignity, but had little taste for reading, writing or debating. He was not a speaker, writer or debater. This is not said to disparage one and elevate the other, for they were both supremely great men, the greatest Americans in their separate centuries. Lincoln was deeply read, a constant student, a fine debater, and a farseeing lawyer.

Of these acquirements Judge David Davis and Leonard Sweet both testified, and his Douglas debates and Cooper Institute speech give conclusive evidence of research, logic, and deep thinking. Of his forecaste and diplomacy, it is enough to cite his *mastery* of men in selecting Stanton and Blair, Grant and Sheridan, McClellan and Logan, regardless of politics, and his clinging to Seward long after Seward had nearly provoked war with England, France and Spain, and refusing to remove Chase as an unfriendly cabinet officer.

Any lawyer with a hundred cases in the highest court of his state, and four terms in the legislature in Lincoln's time, would be classed an able lawyer. Any debator who could match Douglas, the little Giant of the West—well named—was strong in debate. Any statesman who could outclass Seward, Chase and Stanton in forecaste was a *seer of his time!* But, greatest of all, Mr. Lincoln refused to put down the war, or free the slaves without the united support of both political parties. It was not to be an Abolition war, but a war to save the Union.

To form a true measure of the man, let us select five sentences from the greatest philosophers: Socrates said: "A great souled man will not be given to small ambition; he will be considerate of the rights of others, even of their slaves; but above all things, a great souled man will be an unselfish man." And Eschimes said: "The character of a people is known by the men they crown." While Demosthenes said: "Man is not born to his parents, only, but to his country." And Crœsus said: "Take this lesson to heart for I am reminded O, King, that there is a wheel on which the affairs of men revolve, and its mechanism is such as to prevent any man *from being always fortunate.*" Lincoln was promoted because he earned his promotion. It was not an *accident* but merit which produced his promotion. He was successful by earning his success. He is honored by acts so great and unselfish as to command distinction. The growth of his fame is a gradual, increasing and lasting growth. The South has just commenced to honor Lincoln. The wheel that turned hard against him many times is rapidly turning in favor of his fame. Had he lived in ease and attained greatness at a single bound, men would be jealous of his place in history, but his was an unselfish battle with adversity, which millions admire.

LAW STORIES.

A Story is Good if Well Told.

Law stories are rarely new. Caught on the run they are knocked about and worn threadbare through the Journals in quick succession, and few know how to apply them without explaining away the real meat of the moral in the story, which should stand alone for days if need be, to be applied as the mind of each reader or hearer may discern the real purpose.

Take an instance: A merchant and newsboy were walking along the same street which was wet and slippery, when the boy slipped and fell full length on the sidewalk. The man said, "Can't you stand up, little man?" The witty little fellow said, "Well, I fell down *notwithstanding.*" The man saw the joke and carried it home to tell to an evening company, which he did in this manner:

I was walking along down street, and got a bright answer from a newsboy that I fancy was quite clever. The little fellow slipped and fell full length on the sidewalk. I said, "Can't you stand up my little man?" And he turned on me with quick answer "I fell down *nevertheless*." Nobody laughed.

A German fitted up a fine barber shop, marble washstands, and Brussels carpets, mahogany sideboards, and fine mirrors, and a photographer next up above him, left the faucet run over Sunday, wetting the barber's carpets, causing the plaster to drop dust and spatter all over his fine furniture, and when told about it, he made light of it. Asked to make it good, he replied "Oh, you go to h—l," and the barber brought suit in a Justice Court, before a jury.

On the trial the barber was his only witness, and stated what had been told, to the jury with great candor. When the lawyer prompted him, saying, "And what did you say?" "I said I vill not go to hell, I vill go to law," and then rising to his feet he said, "Und shentlemen dot vas schust so bad as to go to hell." He won a fine verdict by saying the right thing well.

An Englishman, Irishman and Scotchman were dining together, when the topic turned on the distance either could see in his own country. The Scotchman could see to Glasgow, 38 miles. The Englishman to Birmingham, 42 miles away. The Irishman was slow to answer, but said "Well, gentlemen, many a time on a clear night, I have seen away up to the moon, 240,000 miles away."

(To illustrate a place to settle for good.) The next evening a German joined the party, when the question arose what nation they would change to; the Englishman asked the German, what countryman he would be if he changed countries, and the German said "I be an Englishman. What would you be if you changed?" to which the Englishman, to be as gallant as the other, said, "I think I'd be a German," and both turned to Pat saying, "And what would you be if you changed countries," "Faith and I think I'd be ashamed of meself," said the wit.

THE CHARACTER OF A LAWYER.

Chief Justice Grant, a veteran of the Michigan Supreme Court, spoke with forceful eloquence at a recent banquet given by the Detroit College of Law in words so impressive that they enforce attention:

"Your chief capital, young men, is in your integrity of character; there is no substitute for fairness and upright dealing with the Courts and clients. Sooner or later the world will find you out and learn of your ability by your practice. You should first find from the facts of your case what your client's just rights are and then think deeply and you will surely find, at the bottom of it all, that laws are founded on common sense.

"I called within a week on a great lawyer of your city, Ashley Pond—now nearly eighty—whom I have known for over a half century, and who I believe never yet took a position in Court or for his client, that he did not *believe to be strictly true.* He is now disabled by age and from an accident and must look out of his window and say that it is for the *young men* to do the work that he is no longer able to perform. But he can truly say: While in practice, he was loyal to his clients, to the Courts and to his conscience.

"His life is a *memory* to the Bar *as a great souled man!*—an example of *success through* integrity."

GENIUS IN SPEECH.

In a suit for the loss of services and society of his wife, killed by a street railway, the following ingenious and persuasive argument was made:

Defendant's attorney offered in evidence the records in a case which had been instituted by the husband three years previous which charged the wife with infidelity of a serious nature. This testimony was admitted without objection. The plaintiff was permitted to testify that shortly after the divorce proceedings had been

filed a complete reconciliation had been effected and that he and his wife had lived together happily until she met her death in the accident. Further facts appear in summing up for plaintiff.

"Gentlemen of the Jury, the defense in this case to my mind is neither improper, unique or crafty. It is the most natural defense that could be urged by an attorney whose duty it had been to defend corporations, not that he was engaged in an unrighteous cause or representing an unworthy client, but more particularly because his client could not exercise any discretion, and in the preparation of this case it was impossible for him to appeal to his client's heart or its understanding. The legislature in providing for the existence of corporations did not endow them with attributes of sympathy.

"No exorbitant damages are claimed because the defendant is a corporation, and I hope you when come to estimate the damages to be awarded this plaintiff, you will not permit any prejudice which you may have against corporations to influence you in awarding a larger sum than you would feel justified in finding had the defendant been a private citizen.

"The defendant corporation is a creature of the law, its right to exist under the law of this State is just as sacred as your right to enjoy liberty, the pursuit of happiness and to hold property; moreover, it is a great public benefactor. Many people have invested their money in this corporation, and it would be manifestly unjust for you to give my client excessive damages just because the defendant is, of necessity, a powerful corporation, and for the same reason you should not minimize the plaintiff's damages out of fear of the defendant's power and influence in this community.

"I make these observations, gentlemen, not only because they are due the defendant as a matter of fairness and justice, but also for the purpose of defining the inherent characteristics of the defendant or to impress upon your minds that the defense in this case is a product of a heartless institution, unmindful of the effect of testimony disclosing the infidelity and the reconciliation of plaintiff and his wife as any additional reason for you to render substantial damages.

"The counsel for the defendant in interposing this defense calculated that you would conclude that a woman who had fallen by the wayside had but little if any value either to her husband or society; that Providence had dealt kindly with him and that the street car company in crushing out her life really operated as a blessing and not a calamity; that the breaking of her bones, and

the tearing of the ligaments, the snuffing out of that life, could not be considered by him as a source of damages.

"Counsel urges that if the plaintiff was properly constituted he would never have become reconciled; that if he had been a strong man he should have cast her from his bosom as being unworthy of the name of wife; that she had by her own licentious act destroyed her worth as a companion; that you should accept this aspect in mitigation of damages, and to express your condemnation of a man who forgives his wife knowing that she has been faithless to her marriage vows.

"But, gentlemen, strong men are not the only ones who are entitled to recover damages! The very foundation of all law is to protect the weak and the wronged, and the weakness of any litigant is not to be belittled on the theory that he had done some act out of the goodness of his heart which is considered by strong men the act of a weakling.

"Did the plaintiff really sustain a loss by the death of his wife in view of the fact that she had done wrong? To determine this all important question you must not be guided entirely by what *you* might or might not do had this woman been your wife. You must consult the plaintiff's heart in order to determine whether this plaintiff sincerely believed that he had an asset in the services, companionship and society of his wife at the time of her death. In arriving at this let us take an inventory of the value which the plaintiff placed on the love he entertained for his wife.

"It is fair to assume when this plaintiff first discovered that his wife had been unfaithful his sense of expediency had been dethroned and he determined to be a strong man and cast her from him, and he employed a lawyer to institute divorce proceedings. But, gentlemen, when reflection set in, the venom in his heart was dispelled. He recalled the first time he had met her and how pure and innocent she was, their walks through the park and their confidential talks, and the thrill of joy he experienced in planning the future and of the time when she would become his wife; how he was inspired and animated by lofty sentiments as he planned in fancy when they should live together in a humble cottage, and he hesitated, pondered and faltered when he contemplated the probable consequences of a divorce, and he began to consult the probabilities. All passed before his mind like a panorama, reluctant to forgive, hesitating to take the final legal step that would make them strangers forever. He interrogated his own conscience as

to whether he would be more happy and content without her, from his own experiences could he really be consoled by the belief that there was fidelity among women. Would it be possible for him to sit by his fireside on a winter's night not knowing where she was and who her companions were, and be content? Would he not find himself while at work or at places of amusement asking himself where she was and if she was not sinking deeper and deeper in sin?

"Is not this the explanation and the influences that were responsible for him becoming reconciled to his wife? Did he not then consider her love and companionship indispensable to his happiness and that he sustained a great loss in her death? It is not as you would do, but as it appeared to him and to them in that humble home. It was that which influenced brave old General Sickles to take back and forgive his wife."

Jury returned a verdict of seven thousand dollars.

LINCOLN'S FIRST MURDER CASE.

(*From Tact In Court.*)

The simplest story of a murder trial is always of interest, and especially so where the case is conducted on either side by men with the ability and genius that Abraham Lincoln possessed.

Grayson was charged with shooting Lockwood, at a camp meeting, on the evening of August 9, 18—, and with running away from the scene of the killing, which was witnessed by Sovine. The proof was so strong that even with an excellent previous character, Grayson came very near being lynched on two occasions soon after his indictment for murder.

The mother of the accused, after failing to secure older counsel, finally engaged young Abraham Lincoln, as he was then called, and the trial came on to an early hearing. No objection was made to the jury, and no cross-examination of witnesses, save the last and only important one, who swore that he knew the parties, saw the shot fired by Grayson, saw him run away, and picked up the deceased, who died instantly.

The evidence of guilt and identity was morally certain. The

attendance was large, the interest intense. Grayson's mother began to wonder why "Abraham remained silent so long, and why he didn't *do something*."

The people finally rested. The tall lawyer (Lincoln) stood up and eyed the strong witness in silence, without books or notes, and slowly began his defense by these questions:

"And you were with Lockwood just before and saw the shooting?"

"Yes."

"And stood very near to them?"

"No, about twenty feet away."

"May it not have been *ten* feet?"

"No, it was twenty feet *or more*."

"In the open field?"

"No, in the timber."

"What kind of timber?"

"Beech timber."

"Leaves on it are rather thick in August?"

"Rather."

"And you think *this* pistol was the one used?"

"It looks like it."

"You could see defendant shoot—see how the barrel hung and all about it!"

"Yes."

"How near was this to the meeting place?"

"Three-quarters of a mile away."

"Where were the lights?"

"Up by the minister's stand."

"Three-quarters of a mile away?"

"Yes."—"In answered *ye twiste*."

"Did you not see a candle there, with Lockwood or Grayson?"

"No! what would we want a candle for?"

"How, then, did you see the shooting?"

"By moonlight!" (defiantly)

"You saw this shooting at ten at night—in beech timber, three-quarters of a mile from the lights—saw the pistol barrel—saw the man fire—saw it twenty feet away—saw it all by moonlight? Saw it nearly a mile from the camp lights?"

"Yes, I told you so before."

The interest was now so intense that men leaned forward to catch the smallest syllable. Then the lawyer drew out a blue covered

almanac from his side coat pocket—opened it slowly—offered it in evidence—showed it to the jury and the court—read from a page with careful deliberation that the moon on that night was unseen and only arose at ONE the next morning!

Following this climax, Mr. Lincoln moved the arrest of the perjured witness as the real murderer, saying: "Nothing but a *motive to clear himself* could have induced him to swear so falsely away the life of one who never did him harm!" With such determined emphasis did Lincoln present his showing that the court ordered Sovine arrested, and under the strain of excitement he broke down and confessed to being the one who fired the fatal shot himself, but denied it was intentional.

This lesson to lawyers, who may not read the whole story, is a good law lecture. It may be added that Lincoln first determined his client was not guilty and having settled that point he knew the story was one made up for a purpose, and that purpose he was bound to discover, and did discover in his own original manner.

As a reader of trials for years, this one presents as keen interest and displays as much sagacity of counsel as any I have found—even Choate or Webster could have done no better—many other trials are more elaborate in detail, many contain passages of wit and arguments of rare eloquence—they are lessons from life and full of wisdom—some of masterful logic, yet none are so great or were so ably conducted as to overshadow this simple victory by a young country lawyer, who lived to be the leader of a nation and filled with honor the highest station in the world.

BOY AND MAN LAWYERS.

(*From Art of Advocates.*)

Life has its likeness in the seasons of the year and even in the parts of a day. We know there will be life and seasons every year and hours in every day; but not until they come and go and show us what results will come with each can we foresee their truth. They are like boy dreams just ahead; but what they can be counted on to bring us is a riddle deeper than the best can solve. And it is

better so. A boy's most vivid dream even can never tell what place awaits him later on. Like Grant, he may be oftener at the foot instead of at the head end of his class.

And then the boy has all to learn, has all to meet, has competition made to match him every day, and he must fight to win and fill each place clear full, or lose it for another, better suited to the niche. This is the very gist of all. Grant filled the niche. So, also, Lincoln did, and Meade and Edison; yet what a long, long struggle each one had.

And so with great doctors, like Agnew, Douglas and Lorenz—great men, and not so great when boys—not one of all the list, so far named, gave even promise at the morning of their lives just what the day would be to either one. Not one had ever dreamed as much, yet each kept thinking on, and working on, and hoping on, till hope seemed his guiding star—until at last he won.

And so the springtime of our lives may open like a rainy day and seem all cheerless, hopeless, dark and dismal in itself, yet brighten in the summer with an autumn fruitage and a harvest of good yield.

So he who asks, what shall the harvest be of life, has framed a riddle very deep indeed—which time alone can solve.

The one unerring test which has applied to all the great inventors, soldiers, merchants, lawyers, teachers, preachers, writers and fortune gainers with the rest, is *patience and a will to work and not surrender till victory hands them its reward.*

And when they gain the goal and reap the harvest of their lives, what else? Why, sure enough, what else? What should there be but rest, and fame and honor, friendship and happiness as a reward. The day ends with its sunset and its rest, to wake again to-morrow. The seasons pass from each to each all noiselessly—Man has his day, his honor, and his rest, as seasons have their passing to and fro. They are not made in vain. No more is Man. The plan of each is further off than we can see. The destiny is as far beyond our vision, thought or forecast, as school-days are a forecast of the man. The future is with one who rules the world.

THE HAYWOOD CASE.

This highly sensational case was tried, after many delays, before the whole nation, as it were, and brought forth the most startling evidence ever given on a murder trial in our country. The details by Harry Orchard of his many murders, his bribery, bigamy, kidnapping, burglary, arson, larceny, blackmail, dynamical and fiendish designs are best described in the elaborate and masterly speech of Clarence S. Darrow, one of the greatest criminal lawyers in any country. Mr. Darrow excels as a terse and rapid cross-examiner, in this, that his points go home to a jury with power and effective influence. He is still in his prime, about six feet tall, strong, robust and vigorous, and although nearly thirty years in jury trial practice, which would wear out one of less physical and mental endurance, he retains all of his fire and eloquence. He has tried cases in Ohio, Pennsylvania, Wisconsin, Minnesota, Illinois and on the Pacific Coast. He was the counsel for C. & N. W. Ry., and has a practice of large proportions. He was Debs' attorney in the Pullman Strike cases, and attorney for the city of Chicago in the traction cases and for the mines in the Anthracite Coal Commission in Philadelphia.

On December 30, 1905, at about seven o'clock in the evening, Frank Steunenberg was killed in Caldwell, Idaho, by the explosion of a dynamite bomb. Steunenberg had been the Governor of Idaho, and in 1899 had called out the militia in the northern part of the state on account of the strike which was carried on by the Western Federation of Miners.

Governor Steunenberg had been a private citizen for a number of years, and was a banker in Caldwell, Idaho—a town of some three or four thousand people—which was his native home. Immediately after his death it was found that a dynamite bomb had been placed near his gate and a fish line attached to the gate and carried to the bomb in such a way as to explode the bomb by the opening of the gate. Governor Steunenberg on returning to his home, shortly after dark, opened the gate and was almost instantly killed. His death caused the greatest excitement in Caldwell, in Idaho, and in fact throughout the country. Orchard had been in Caldwell at two different times in the last few weeks, and on this occasion had been staying at a hotel for upwards of

a week. He seemed to have no business in the town, and some suspicious actions attracted attention to him and caused his arrest.

The "confession" made by Orchard was kept secret for a number of weeks and a secret requisition was issued by the Governor of Idaho upon the Governor of Colorado. This was secretly honored and an order made by the Governor to turn the prisoners over to the authorities of Idaho. The prisoners were arrested about ten o'clock on a Saturday night, and denied access to or consultation with their friends or counsel.

The case of Haywood, under the indictment for murder, was placed on the calendar first and came on for trial on the 9th day of May, 1907, and a verdict was returned in the last days of July. After twenty hours of deliberation a verdict of "Not Guilty" was reached.

THE PLEA TO THE JURY.

Gentlemen, I need not tell you how important this case is. How important to the man on trial and to these who still must be placed where he is to-day. How important to his family and his friends. How important to society. How important to a great movement which represents the hopes and the wishes and the aspirations of all men who labor to sustain their daily life. You know it! You could not have sat here day after day so long as you have without understanding it, and grasping it, and excusing us if in our haste and zeal we seemed to say things we should not have said, and forgot things we should have spoken of to you.

And, gentlemen, we are here as aliens to you. Our client and the men who are with him down here in this jail have been brought fifteen hundred miles to be tried by a practically foreign, alien jury—a jury unfamiliar with their method of thought, a jury unfamiliar with their methods of life, a jury who has not viewed life from the standpoints of industry as these men have viewed it; I am here, two thousand miles from home, unacquainted with you, with your life, with your methods of reasoning—all of us are brought here in an alien country, before people, if not unfriendly, whom at least we do not know, and we are here met by the ablest counsel that the State of Idaho ever produced—the peer of any counsel anywhere; and, more than that, we are here in the home of the man who was killed in the most ruthless, cowardly, brutal way that any man could meet his death.

* * * * * * *

Gentlemen of the jury, one thing more: William D. Haywood is charged with murder. He is charged with having killed ex-Governor Steunenberg. He was not here. He was fifteen hundred or a thousand miles away, and he had not been here for years. There might be some member of this jury who would hesitate to take away the life of a human being upon the rotten testimony that has been given to this jury to convict a fellow citizen. There might be some who still hold in their minds a lurking suspicion that this defendant had to do with this horrible murder. You might say, we will compromise; we cannot take his life upon Orchard's word, but we will send him to the penitentiary; we will find him guilty of manslaughter; we will find him guilty of murder in the second degree instead of the first.

Take Orchard. Take his own story. He was acquainted with Moyer. He was acquainted with Haywood. He was acquainted with Pettibone. He had worked himself into the confidence of Pettibone at least. He had been invited to his house. He had met his wife. He had eaten at his table. He had slept in his bed. He was his friend. Gentlemen of the jury, I ask you, who watched him, who saw this monster on the witness stand, I ask you whether there was the least look of pity, the least sign of regret, the least feeling of sorrow when this man sought to hand over his friends to the executioner? Did he look any different? Was there any different gleam in his eye or different cast in his countenance or a single flutter of his iron nerve that was not there when he met a reeling, staggering, drunken man and shot him three times before he could raise his hand?

If there is any pity in his soul, if there is any of the heavenly mercy, if there is any of the Christlike forgiveness it hasn't gone out to Pettibone at whose table he had eaten. But let us take a case that is plainer than that, gentlemen of the jury. You are not emotional men. Here are twelve men who are mainly farmers; you haven't read fairy stories. You work with your hands. Most of you, perhaps, never heard a fairy story until you heard Orchard's. I am not going to appeal to you on any fantastic basis. I am going to put a proposition to twelve hard-handed and hard-headed men of Idaho, and I want you to say, gentlemen of the jury, whether religion has changed the nature of this wretch, and I should expect if any of you were interested in religion you would say that he had not got it. You would have to say it to keep from giving up your own.

Let us see how it appeals to twelve men. When you are through with this case and have gone back to your homes and think of it, as you will, over and over and over again (for it is a historical case), pictures will come back to you, of this lawyer, that lawyer, of this court, of this witness, of this defendant—you will see them while you are waking, you will see them while you are sleeping, you will dream of it and you will think of it, and you will wonder whether your poor, weak, human judgment erred, or whether you did right, or whether, after all, you might not have done otherwise. Pictures will come of the figures in this case, and amongst the rest Harry Orchard's. It may not come to all of you alike. It may not come to me as it comes to others. One of you may picture Harry Orchard as he is meeting this drunken man reeling out of the saloon and shooting him to death in the darkness and the night. Another man may picture him as he places the fagot under Nelville's saloon and runs away. Another may picture him as he plants a box of powder under the station and hurries off in the darkness to save his life, while he sends fourteen souls unshriven into the great beyond. Another may picture him placing a bomb at Steunenberg's gate.

Hawley will picture him as a cherubim with wings growing out from his shoulders and with a halo just above his head and singing songs, with a lawyer on one side of him and Detective McPartland on the other. I don't know yet how Borah will picture him, but everybody will picture him according to how they see him. My picture is none of these—none of these. I see what to me is the crowning act of infamy in Harry Orchard's life, an act which throws into darkness every other deed that he ever committed as long as he has lived, and he didn't do this until he had got Christianity or McPartlandism, whatever that is. Until he had confessed and been forgiven by Father McPartland, he had some spark of manhood still in his breast. There have been other criminals in this world, great criminals. Our penitentiaries are full of criminals whose names are unknown. Men have mounted the scaffold, they have fallen through the trapdoor, they have been strangled to death, their bodies have been eaten up with quicklime inside of the prison walls, and they protected their names. Their name was the only thing sacred that was left to the criminal. Look at this fellow, you twelve men, and tell me what you think of him, and whether you will take away a life on account of him. Who was he?

He left Ontario a young man. His record was bad. It was not infamously bad. His name was not Harry Orchard; his name was Albert Horseley when he left. He went to Detroit with another man's wife. When he reached Detroit his name was Harry Orchard. He lied, he stole, he burglarized, he committed arson and became a murderer and his name was Harry Orchard. His best friend never knew any name but that. The name of Horseley was buried deep in this criminal's heart and he protected it as the one spark of goodness that bound him back to his childhood days. He was not totally depraved. He protected his name. He had gone away from Ontario. He had taken the name of Orchard and had covered it with infamy and slime, but he had left the name of Horseley comparatively pure in the little Ontario town. Now, gentlemen, this is the picture of Harry Orchard that comes to me. You may picture him a saint if you want to or if you can, and if you can, you may take away the life of a fellow being on his testimony, and I will say to you as the judge does to the condemned murderer, "May God have mercy on your souls."

You may picture him as you think he should be pictured. But here is this picture: here is a little rural town off in Canada; here is a country graveyard with a white fence around it and a church by its side. Here are two-fashioned Quaker people who read their Bible and who love their God and who live, in the sight and the fear of their God, a quiet, peaceful, honest life, and who reared their family hoping they would follow in the footsteps of that Quaker couple. They died and are buried in that old graveyard in the country town; the names on the marble headstone are never known beyond the limits of the little town where they lived and where they died; but they lived an honest life, an upright, God-fearing life, and they laid down their burden when it was done and sleep the peaceful sleep of the just, and their names are respected and their names were honored. They bore two sons and six daughters. One son went out into the world. He married. He had a child. Temptation overcame him. He left his wife to toil for herself. He left his child, a baby girl, unprotected and unaided to grow up alone without a dollar, or a father's love; and he went out into the world and covered himself with mud and dirt and crime until he was revolting in the sight of God and man. The brother stayed at home, a quiet, peaceful, honest man, having children to bear the Horseley name to generations yet un-

born. The sisters married. They had children in whose veins flowed the Horseley blood. They are quiet, peaceful, honest folks. The little girl, growing up neglected, uncared for, has been struggling alone until she is nine years old. The Horseley name is all she has. The honor of the grandfather and the grandmother sleeping in their Quaker graves, that is all she has. She has nothing from the father who deserted her.

Suddenly there comes back a story that the monumental criminal of the ages has revealed the name of Albert Horseley; that this man, who went out from this quiet town, covered himself with crime and with infamy, so that every neighbor who goes through that quiet yard can point to the grave of this old Quaker couple and say, "There lies the father and the mother of the greatest criminal of modern times," and the brother and the sisters, living and toiling as best they can, with the burden of the world upon them, the world now will point to them, "There is the brother, there are the sisters, these are the nieces and these are the nephews of that monster who has challenged the civilized world with his iniquities and his crimes," and the deserted wife, and above all, the little girl, flesh of his flesh and bone of his bone.

Gentlemen, I want to know what any one of you think of this miserable wretch who blighted the life of this deserted girl to save his miserable neck. Am I still crazy? Are the men of Idaho different from other men? Does not the same sort of blood flow through your veins as flows through the veins of all men who ever lived? Can anybody look upon this act with anything but horror, and yet Hawley says, every human being is to be condemned who has dared to run counter to his perjured word. Think of that girl! Gentlemen, every act of this villain's life pales into insignificance compared to the crime committed against that child. The blowing up of the Independence depot was a sacrament compared with running that poisoned dagger into the heart of a nine year old babe, a dagger that could not kill, gentlemen. If it could kill, well and good. But this was a dagger that would fester and corrode, and leave its pain and sting and leave the fingers of the world pointed at her and the voice of the world raised against her and her offspring as long as they remain upon the earth.

Gentlemen, am I wrong? Is there any man that can ever think of Harry Orchard—any man but Hawley—is there any sane man, I will say, who can ever think of Harry Orchard except in loathing and disgust? You have seen him here. You

have heard his story. You have seen him sleek and fat and well fed, facing this jury day by day asking for this man's blood. Do you ever want to see him again? Do you ever want to hear his name again? In the future when you are trying to find the most infamous word that the English language has given us can you think of anything but Orchard? Do you want to read a paper again with his name in it? And yet, gentlemen, upon the testimony of this brute, this man who would assassinate his own nine year old girl with a dagger a thousand times more malicious and deadly than one that kills, upon his testimony, you are asked to get rid of Bill Haywood. For what? Does anybody else attack his name? Anybody else swear anything against him? Has any other voice been raised to accuse him? Oh, no. You are asked to take his life because down in Colorado he has been against the Mine Owners' Association, and because he has been organizing the weak, the poor, the toilers—has been welding together in one great brotherhood those men—has been calling them to fight under one banner for a common cause; and for that reason he has raised up against him the power of this body of men, and you are asked to kill Haywood.

To kill him, gentlemen! I want to speak to you plainly. Mr. Haywood is not my greatest concern. Other men have died before him. Other men have been martyrs to a holy cause since the world began. Wherever men have looked upward and onward, forgotten their selfishness, struggled for humanity, worked for the poor and the weak, they have been sacrificed. They have been sacrificed in the prison, on the scaffold, in the flame. They have met their death, and he can meet his, if you twelve men say he must. But, gentlemen, you short-sighted men of the prosecution, you men of the Mine Owners' Association, you people who would cure hatred with hate, you who think you can crush out the feelings and the hopes and the aspirations of men by tying a noose around his neck, you who are seeking to kill him, not because it is Haywood, but because he represents a class, don't be so blind, don't be so foolish as to believe you can strangle the Western Federation of Miners when you tie a rope around his neck. Don't be so blind in your madness as to believe that when you make three fresh new graves you will kill the labor movement of the world. I want to say to you gentlemen. Bill Haywood can't die unless you kill him. You must tie the rope. You twelve men of Idaho, the burden will be on you. If at the behest of this

mob you should kill Bill Haywood, he is mortal, he will die, but I want to say that a million men will grasp the banner of labor at the open grave where Haywood lays it down, and in spite of prisons or scaffolds or fire, in spite of prosecution or jury or courts, these men of willing hands will carry it on to victory in the end.

Jury said, "Not Guilty."

SELF-DEFENSE.

THE OPENING AND CLOSE OF AN ELOQUENT PLEA BY JAMES HAMILTON LEWIS.

Note: Dora McDonald was indicted for murder, for killing Webster Guerin, a young artist who had his studio in the Omaha Building in Chicago. Guerin was unmarried, and living with his mother and brothers at their family home. Mrs. McDonald was a Jewess who had divorced her husband, Samuel Barclay, at the instigation of McDonald, who was a prominent Catholic, who divorced his wife and mother of his children in order that the marriage with Dora Feldman Barclay could be made. It was charged that he paid all expenses of both divorces. McDonald was an old man, potent in the politics of Illinois and particularly Chicago; dictator in the naming of political officers and a millionaire.

Mrs. McDonald had known Guerin when a boy of sixteen, and it was charged that by her efforts he became the subject of her affection, kept up during his manhood; that upon the eve of his approaching marriage to another, she, in jealousy and revenge, went to his studio and shot him to death, after having threatened a number of times to do so. The evidence disclosed that through broken glass in the studio door Mrs. McDonald was standing with pistol in her hand and screaming, while Guerin lay upon the floor dead.

The defense led the community and the state to assume that insanity would be tendered as an excuse for the act, but as the case progressed, the chief counsel, Col. Jas. Hamilton Lewis began to develop unexpectedly the defense of self-defense, insisting that the deceased had been conducting a course of blackmail and extortion upon the defendant, and that she finally had broken down and confessed all to her husband.

Gentlemen of the Jury:

This case has truly been a trying one. During these weeks that you have sat here you have had occasion to observe the peculiar course that criminal trials take. In all contests, gentle-

men of the jury, whether it is one like this, or one, perchance, where there may be nothing more at stake than the question of dollars and cents, or a piece of property, the contestants each go to extremes. One will go beyond what the necessities require and the other will meet that by going to the other extreme, to what probably the necessity did not call for. It is because of that, gentlemen of the jury, you are designated to hear both sides and judge between these extremes of that which is about right—at the center. . . .

A *woman* is brought to the bar of justice charged with murder. Murder—the willful, deliberate and malicious taking of the life of a fellow being without excuse or justification. So heinous has been the very suggestion of the word "murder" that we quail from its very mention. It shakes the very sensibilities of men to comprehend the word "murder." We know that in the beginning of life when the "mark of Cain" fell upon his brother, the first murder was committed, and thus from that time to this, murderers have been marked by the "brand of Cain." What is such thing? What is murder?

Does a person from a quiet life that has never been marked with an unkind act to a human being, from a gentle life evidenced by every little act of charity, from a peaceful life never wronging any human being, at one leap become the bloody-jawed tigress of the jungle and leap at one bound to the pinnacle of crime, the destruction of fellow beings? We have pictured to us a creature without fear of God or love of man: we have had pictured those who hurt the innocent and persecute the defenseless—one who could maltreat the children of neighbors and defile the dead. This defendant has been pictured to you at the apex of this horrible graduation in the school of crime;—from a seductive adulteress to the malicious murderess. Are there any things before you to indicate that she could be such a one as could be guilty of the heinous offense charged in this indictment against her? —Murder!—

After an exhaustive argument of 115 pages on the facts which space prevents repeating, counsel said:

He wanted to leave the impression and the evidences that she had committed suicide. He knew that she had often threatened so to do. She had tried it in California herself after Guerin had continually persecuted her. You remember she said to poor little Mrs. Belmont there in the cell, "I have been hounded, hounded

and hounded," and as she had said to Mary and to Mr. McDonald, "I have been hounded and hounded," and as she piteously cried to Mrs. Belmont, "I have never had a chance in life, I have never had a chance; the only friend I ever had in the world was my father and he passed from me before I knew him, while I was very young." This poor, unfortunate woman driven to desperation was near death. There was a woman in the matron of the cell and to the bosom of a woman a woman's wails went out—"I am hounded, I am hounded; I have never had a chance in my life." This poor, hapless woman there in that room with this man Guerin, he either intended to take her life and leave the impression that she had committed suicide to free herself; or, gentlemen,—I have the other idea which it is my duty to advance to you,—that perchance he did not intend to kill, but she must take back what she told Mike McDonald. She must go back and tell him it was not so. He takes this pistol in his right hand with his left hand on her throat and turned the pistol in her face, choking her in the meantime, cursing her and threatening her if she did not retract—and in the struggle she, as she told the officer in her delirium, "saw something shiny," and I have no doubt her hand went forward, grabbing, snatching, pushing, and in frantic fright forced the pistol around against his body, and in that manner the shooting must have occurred.

Now let us understand each other, gentlemen; I will tell you the way I think the killing occurred. She had confessed everything to Mike McDonald,—to her husband—the night before. It was by his orders that she visited Guerin on this morning. She told Guerin of her confession to her husband. That she had told everything! Guerin became frantic with anger! He denounced her. In a temper Webster Guerin set upon her. He seized her—threw her about, struck her on the head knocking her into the chair, from which she had attempted to arise. He choked her. She sought to cry out. He took his revolver from his desk where it was kept,—as she was "sitting by the drawer of the desk." I am of the opinion that he did not at that moment intend to kill her, he probably meant to frighten her to promise to retract and stay the approach of McDonald, but she struggled with him. She was strangling. With his left hand clutching her throat he thrust the revolver in her face. She with the suddenness of life's desperate effort to save itself shoved with both hands the weapon around and back towards and against his breast,

until his finger pulled the trigger through the tension of the grip and sent a bullet into his own bosom: Heaven's rescue of the woman;—Its designed justice against the man.

* * * * * * * * *

What man of you would put your hand on a woman's throat to choke her and beat her in the face, after robbing her of her jewelry, and her money,—her honor. Locking her in a room far from where cries could be heard, and attempt to murder her with a muffled pistol! Oh, I apologize to you for saying, put yourself in his place. Still, I say, how can we measure the exact limit of action the heart should dictate, when life is threatened and death is upon us? What would we have done in such awful emergency? How would we have acted, how would we have defended, *would we have shot?* Or would we have paused to ask ourselves, how far will the law allow me to go before I am murdered?

It is easy enough in the cool of deliberation to calculate what a man might do or what he should do, but in the midst of severe conflict, involving the most awful consequences turn either way we might, who shall say what shall be the exact method of procedure and the exact manner of performance? Only those who have been in such emergency with its impending dangers hanging over them can appreciate the impossibility and the injustice of those who in the freedom of contemplation aided by all that can assist in quiet conclusion, demanding that such standard should be applied to that other state of circumstances where no one save those who have been tried can speak, much less should be allowed to judge.

We all remember the philosophy spoken by Richelieu, the great Cardinal, in the deep of the night, surrounded by foes without and traitors within, menaced by death and threatened by disgrace and dishonor. Any move calculated to be his destruction; and then at such time confronted with the tendered reasoning that it was his duty to allow the calm of conscience to direct the dictates of his mind and the course of his conduct. It is in reply to this astounding and inhuman demand that he responds:

"O! ye, whose hour-glass shifts its tranquil sands
In the unvex'd silence of a student's cell;
Ye, whose untempted hearts have never toss'd
Upon the dark and stormy tides where life
Gives battle to the elements,—and man

Wrestles with man for some slight plank, whose weight
Will bear but one—while round the desperate wretch
The hungry billows roar—and the fierce Fate,
Like some huge monster, dim-seen through the surf,
Waits him who drops!—Ye safe and formal men,
Who write the deeds, and with unfeverish hand
Weigh in nice scales the struggles of the trapped
And the cries of the stricken,
Ye cannot know what ye have never tried!"

There may be things in this case which do not appear good to you so far as the proprieties of life are considered, but you are not called to pass judgment upon the imperfections of this miserable woman. You are assembled to say how far her transgressions may be forgiven her and new life and hope held out to her.

Counsel says this woman should be punished. Punished? Can any punishment surpass that which already has fallen upon this homeless, hopeless, helpless woman? The doors of to-morrow are shut upon her. The hand of friendship has been withdrawn. The faces she loved have been averted. The friends departed. She is destined as one who is a plague to walk forever alone, alone forever, and forever. To society an outcast. To love a stranger. To the world a woman suspected. Where in death or imprisonment can there be such punishment as will be hers with the world turned against her and her child—the blood of her heart—scorned as a son of a woman who has been tried for murder! Which one of us would care to have a sister or a woman dear to us go through the life she will face even after freedom? Her days are darkness;—her nights are death! For her there is no freedom—all is punishment—all is imprisonment.

* * * * * * * * *

The great Persian philosopher, Sadii, tells of a man and woman who started out together. The days of the man were lighted with sunshine, his nights by stars. He reached the end of his journey at the gates of God and demanded his reward like a victor. Not so the woman. She listened to the allurements of hope and the whisperings of love. She wandered through devious ways where her hands were torn and her feet were bruised, and her heart was made to bleed. She, too, reached the gates at last, not standing but on her knees, not a victor, but as one vanquished. Her only cry was, "Lord, be merciful." The great Master called Amahi,

the Angel of judgment, to judge her. Amalfi took the woman away. When they returned her face was radiant, her tears were dry. The Master demanded of Amalfi, "How have you judged her?" He said, "Oh, good Master, as one who was miserable! A woman in agony, whose days have been sadness and whose nights all misery." And the Master said, "Stand up, come forth and be free, for it is for such as thou that God gave his strength to men that they might take woman by the hand and lead her to where she may hear the Christ say, 'Come unto me all ye that labor and are heavy laden and I will give you rest.'" Then the hosannas of the Angels rang out their approval as God proclaimed, "With what judgment ye meet out to men, that judgment shall be meted unto you by your Father in Heaven."

* * * * * * * * *

I have spoken the last word that will be given me to speak in behalf of this unfortunate and miserable woman,—but one thing I want to say to you—whatever your decision may be, I trust it will console your future steps by day, and comfort your pillow by night. And if, when you return home, some woman near and dear to you shall ask, "How did you judge her—as one who was miserable,—a woman?" or, if there be a little one who, noting your long absence, shall come close to you and say, "Tell me about it, did you send back to her little boy—his mama?" Heaven grant your answer may be that rewarded with the benediction:—

"Well done, thou good and faithful servant."—I thank you!

Jury said, "Not Guilty," and the court room rang with applause, which was promptly suppressed.

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